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LIMITE

CRIMORG	1
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NOTE

from : General Secretariat

to : Multidisciplinary Group on organised crime

No. prev. doc. : 12264/07 CRIMORG 132 ENFOPOL 145 ENFOCUSTOM 86

Subject : Overview of replies to questionnaire on undercover officers

This addendum contains the texts of Member States' legislation received in reply to question II. 10. (On what legal basis is the deployment foreign undercover officers authorised?) of the questionnaire set out in 12264/07 CRIMORG 132 ENFOPOL 145 ENFOCUSTOM 86.

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Austrian Law

Sections 73 and 74 of the Act on Judicial Cooperation in Criminal Matters with the Member States of the European Union (EU-JZG); text attached. Following the reform of the Austrian Code of Criminal Procedure, sections 73 and 74 EU-JZG are currently under revision.

Belgian Law

Legislation : Law on Special Investigating Methods of January 6th 2003 (hereafter “SIM Law”), modified in 2005, that inserted in the Belgian Criminal Procedure Code the legal frame within which infiltration operations can be authorised by a Public Prosecutor or an Investigating Judge

In addition to the legal prescription that only police-officers are authorised to execute special investigation methods two comments linked directly to this Legal Act make the deployment of foreign UC-officers possible :

- The fact that the law prescribes that only police-officers are accepted as UC, doesn't exclude that in respect of international agreements foreign law enforcement agencies can, under the supervision and conduct of the competent authorities be deployed in Belgium. All legal prescriptions that must be respected by the Belgian police are to be respected by the foreign officers.
- UC-deployments must be operated by for these purpose highly trained officers. This is a fundamental condition. These kinds of operations are extremely delicate and need a strict conduct and control of the deployed officers within the police. It is not possible to assign whichever police officer for this kind of operation.

Bulgarian Law

- Penal Procedure Code – Section VIII “Special Intelligence Means” of Chapter XIV “Methods of evidencing”, Article 476 – please find attached the text in the annex at the end of the Questionnaire;
- Law for the Special Intelligence Devices – please find attached the text in the annex at the end of the Questionnaire;
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (in force for the Republic of Bulgaria from 1 September 2004)

Cyprus

There is no domestic legislation concerning the deployment of foreign undercover officers. The deployment of foreign undercover officers may take place, following:

- a request under articles 13 & 14 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union in accordance with Article 34 of the Treaty on European Union,
- bilateral, multilateral agreements or other arrangements under Articles 19 & 20 of the United Nations Convention against Transnational Organized Crime,
- bilateral, multilateral agreements under the United Nations Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances,
- an agreement with a Member State or a Third Country on police cooperation.

There is no specific provision for the deployment of undercover officers in bilateral agreements on police cooperation. However, the deployment may be carried out within the scope of such agreements based on general provisions: i.e “Collaboration between the Parties, within the framework of combating crime shall include information exchange and the providing of assistance in the operational activity of investigation into: a. the identification of and search for persons who have disappeared, b. the investigation of and search of persons who have committed offences in the territory of either of the Parties...etc”.

Czech Law

Section 437 in conj. with section 158e constitutes a firm legal basis for the deployment of foreign undercover officers. The wording of these provisions translated to English is as follows:

Section 437

Covert Investigation

- (1) In accordance with the conditions set out in a promulgated international treaty which is binding on the Czech Republic, also a foreign police officer, upon the request of the respective authorities of a foreign state, or upon the request of an investigative, prosecuting or adjudicating authority, may act on the territory of the Czech Republic as an undercover officer in the meaning of section 185e or carry out a sham transfer pursuant to section 158c.
- (2) The authority competent to submit a motion to the High Court in Prague for approving the operation of a foreign police officer as an undercover officer pursuant to section 158e and permitting a sham transfer pursuant to section 158c shall be the High Prosecuting Attorney's Office in Prague.

Section 158e

Use of an undercover officer

- (1) If criminal proceedings are being conducted for an especially serious intentional criminal offence, for a criminal offence committed for the benefit of a criminal conspiracy or for another intentional criminal offence the prosecution of which is obligatory under a promulgated international treaty binding on the Czech Republic, the police authority, if it is a unit of the Police of the Czech Republic, is entitled to use an undercover officer.
- (2) An undercover officer shall be an officer of the Police of the Czech Republic fulfilling the tasks assigned to him/her by the managing police authority, usually involving concealment of the actual purpose of his/her activity. If necessary for the deployment of the undercover officer, his/her preparation or protection, it is possible, in order to conceal his/her identity,
 - (a) to create a cover story about another personal existence and to insert personal data created for this cover story into information systems operated under special Acts;

- (b) to carry out economic activities requiring a special licence, permit or registration;
 - (c) to conceal the fact that he/she is an officer of the Police of the Czech Republic.
- (3) Public administration authorities are obliged to cooperate with the Police of the Czech Republic without delay in the execution of the authorizations specified in (a) to (c) above.
 - (4) The use of an undercover officer shall be subject to authorization proposed by a prosecuting attorney from the High Prosecuting Attorney's Office and granted by a judge of the High Court in whose district the prosecuting attorney submitting the proposal operates. The authorisation must specify the purpose of the use of the undercover officer and the period for which he/she will be used, as well as data enabling identification of the undercover officer. The period of authorisation may be extended on the basis of a new motion containing an evaluation of the agent's activities to date, and it may be extended so repeatedly.
 - (5) An undercover officer does not require any additional authorization for the surveillance of persons and objects to the extent specified in section 158d (2).
 - (6) During his/her deployment, an undercover officer shall select those means which are effective for carrying out his/her service mission and which do not cause any harm to the rights of other persons. He/she has no other obligations under the special Act regulating the status of the officers of the Police of the Czech Republic.
 - (7) The prosecuting attorney shall request the police authority to provide the data necessary to assess whether the reasons for using the undercover officer continue and whether his/her activities are in accordance with the law. He/she must assess this data at regular intervals, at least once in a three-month period, and if the reasons for using the undercover officer have ceased to exist, he/she shall instruct the police authority to immediately terminate the undercover officer's activity. The police authority shall submit to the prosecuting attorney a report on the results of the use of the undercover officer.
 - (8) An undercover officer may also carry out his/her tasks on the territory of another state. The decision to send him/her abroad shall be taken by the Police President following the previous consent from the authorities of the state in whose territory the undercover officer is to operate, and on the basis of the authorisation by a judge specified in paragraph (4), unless stipulated otherwise in a promulgated international treaty binding on the Czech Republic; in other respects the provisions of paragraphs (1) to (7) shall apply.

AGREEMENT between the Czech Republic and the Federal Republic of Germany on the supplements to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and on facilitating its application.

Art.21

Covert investigation

- (1) If there is a need, for the purposes of investigation conducted by the authorities of the requesting state for a crime punishable under the law of both contracting states, to deploy on the sovereign territory of a contracting state an officer of the police or another authority having the status of an undercover officer ("agent" under the Czech law or "Verdeckter Ermittler" under the German law) - hereinafter referred to as "police officer", this state may, upon a special request, grant its approval for such deployment. The requesting contracting state shall submit such a request only if the clarification of the facts of the case would be significantly impeded without the planned measure. The request does not need to contain the police officer's real identity. For the request under sentence one, direct communication between prosecuting attorney offices shall apply as specified in Art. 11 (1) of this Agreement. The requesting state shall notify of the request the focal point of the requested state specified in par. (8).
- (2) Investigation on the sovereign territory of the requested contracting state shall be limited to individual deployments of limited time periods. The preparation of the deployment shall be performed in close coordination between the involved authorities of the contracting states. The management of the deployment of the police officer and the ensuring of his/her safety shall be in the competence of an official of the requested state; acts of officers of the requesting contracting state shall be attributed to the requested contracting state. This may request at any time that the investigation be terminated.
- (3) The authorization of the police officer and the conditions under which the activity shall be carried out shall be governed by the law of that contracting state on whose sovereign territory the activity is carried out.

- (4) During his/her deployment, the police officer may carry a service weapon and technical means necessary for the deployment, unless the requested contracting state expressly disagrees with that. The use of a service weapon except for necessary defence shall be inadmissible.
- (5) If, for emergency reasons, it is impossible to request a prior consent from the other contracting state and the legal prerequisites for the deployment of a police officer on the sovereign territory of the other contracting state are met, police officers are exceptionally entitled to operate in the sovereign territory of the other contracting state without a prior consent, if otherwise there was a danger of the changed identity being revealed. The operation of the police officer in such a case shall be limited to the extent necessary for preserving his/her legend and ensuring his/her safety. The entry to the territory must be immediately announced to the authorities of the other contracting state as laid down in paragraphs (1) and (8). This contracting state may request at any time that the deployment be terminated. A subsequent request must be submitted without delay specifying the reasons for the entry to the territory without a prior consent. The covert investigations under this paragraph shall be limited to the areas of:...
- (6) Paragraphs (1) to (4) shall apply accordingly if the request is submitted by the state on whose sovereign territory the activity of the police officer of the other contracting state is to be carried out.
- (7) The contracting states shall take all measures to conceal the identity and ensure the safety of the police officer also after the termination of the cross-border deployment.
- (8) The focal point referred to in par.(1) shall be::
- for the Czech Republic: Police Presidium of the Czech Republic;
 - for the Federal Republic of Germany: Federal Criminal Office (Bundeskriminalamt) or in the case of crimes in the field of cross-border movement of goods, the Customs Criminal Office (Zollkriminalamt).
- (9) The foregoing paragraphs shall not preclude the possibility of one contracting state deploying on its territory, upon the request of the other contracting state, its own police officer.

(10) The foregoing paragraphs shall not preclude the possibility of other officers of the requesting contracting state conducting, upon the request of this contracting state, covert investigations on the sovereign territory of the other contracting state aimed at clearing up crimes. Paragraphs (5) and (9) shall apply accordingly.

AGREEMENT between the Czech Republic and the Republic of Austria on Police Cooperation and on the Second Supplement to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959

Art.30

Covert investigation

/1/ As part of the investigation of criminal offences, a contracting state may, under the conditions laid down in its law and upon a prior request for mutual assistance, consent to the deployment of officers of the requesting state, who shall have under the Czech law the status of an undercover officer (“agent“ in Czech terminology) or a person carrying out a sham transfer, or who under the Austrian law work undercover or under false identity (hereinafter referred to as “undercover officer”). The requesting contracting state shall submit such a request only if without the deployment of the undercover officer the investigation of a criminal offence would be frustrated or seriously impeded. The request does not need to indicate the officer’s real identity.

/2/ Covert investigations on the territory of the requested contracting state shall be limited to individual deployments of limited time periods. The deployment shall be prepared in close coordination between the involved authorities of the contracting states. The management of the deployment of the undercover officer shall be in the competence of an official of the requested contracting state; the actions of the undercover officer of the requesting contracting state shall be attributed to the requested contracting state. This state may at any time request that the deployment be terminated.

/3/ The deployment of an undercover officer under this article and the conditions under which it shall be carried out, as well as the conditions for using the results of the investigation, shall be governed by the legal order of the contracting state on whose territory the undercover officer is deployed.

/4/ The requested contracting state shall provide the undercover officer the necessary personnel, logistic and technical support and shall take all the necessary measures to protect the undercover officer during his/her deployment on its territory.

/5/ If, for emergency reasons, it is impossible to submit a request under par. (1) before crossing the state border and there is a serious danger that without the deployment of the undercover officer on the territory of the other contracting state the identity of this undercover officer could be revealed, his/her deployment on the territory of the other contracting state shall exceptionally be admissible without a prior consent. Even in this case, the prerequisites for the deployment of an undercover officer on the territory of the other contracting state must be met. The deployment shall be immediately announced to the national headquarters as well as the authority of the other contracting state specified in Article 31 (3). The request including the reasons justifying the deployment without a prior consent shall be submitted subsequently without delay. The operation of the undercover officer in such cases shall be limited to the extent necessary for preserving the legend or ensuring the safety of the undercover officer.

/6/ Paragraphs (1) to (4) shall apply accordingly in the cases when a contracting state requests the deployment of an undercover officer of the other contracting state in its territory. In such cases, if not agreed otherwise, the costs of the deployment shall be covered by the requesting contracting state.

/7/ Contracting states shall take all measures to conceal the identity and ensure the safety of the undercover officer also after the termination of his/her deployment.

German Law

The deployment of undercover officers is governed by Sections 110a et seq. of the German Code of Criminal Procedure [*Strafprozessordnung*], which provide as follows:

Section 110a - Code of Criminal Procedure

- (1) Undercover investigators may be used to clear up crimes where the facts are sufficient to indicate that a very significant criminal offence has been committed:
1. in the area of the illegal trade in drugs or weapons or of counterfeiting money or official stamps,
 2. in the area of the protection of state security (Sections 74a and 120 of the Judicature Act (*Gerichtsverfassungsgesetz*),
 3. on a commercial or habitual basis, or
 4. by a member of a gang or in an otherwise organised manner.

Undercover investigators may also be used to clear up serious crimes where certain facts suggest a danger of repetition. The use of undercover investigators shall be admissible only if the investigations would be fruitless or significantly more difficult using other methods.

Undercover investigators may also be used to clear up crimes where the special significance of an offence so requires and other measures offer no prospect of success.

- (2) Undercover investigators shall be police officers who carry out investigations under an assigned false identity which they assume long term (cover). They may be parties to legal transactions using that cover.
- (3) Where it is indispensable for building up or maintaining a cover story, the relevant documents may be drawn up, altered and used.

Section 110b - Code of Criminal Procedure

- (1) Use of an undercover investigator shall require the prior consent of the public prosecutor's office. If urgent action is required and the decision of the public prosecutor's office cannot be obtained beforehand, it must then be obtained at the earliest opportunity; the measure shall be ended if the public prosecutor's office has not given its consent within three days. Consent shall be given in writing and for a specified period. It may be extended providing the conditions for the use of undercover investigators continue to be fulfilled.

- (2) Operations
 1. which concern a specific accused, or
 2. during which the undercover investigator enters private premises not accessible to the public

shall require the consent of a court. If urgent action is required, the consent of the public prosecutor's office shall suffice. Where the decision of the public prosecutor's office cannot be obtained beforehand, it must then be obtained at the earliest opportunity. The measure shall be ended if the court does not give its consent within three days. The third and fourth sentences of Subsection 1 shall apply *mutatis mutandis*.

- (3) The identity of the undercover investigator may be kept secret even after the operation has ended. The public prosecutor and the court responsible for approving the operation may require the investigator's identity to be disclosed to them. Otherwise, in criminal proceedings an undercover investigator's identity may be kept secret in accordance with Section 96, particularly if there is cause for concern that disclosure would endanger the life, limb or liberty of the undercover investigator or of another person or compromise the possibility of further deploying the undercover investigator.

Section 110c - Code of Criminal Procedure

Undercover investigators may use their cover story to gain entry to a private dwelling with the rightholder's agreement. Such agreement may not be obtained by falsely pretending to a right of entry beyond that based on the cover story. The undercover investigator's powers shall otherwise be determined by this Act and by other legal provisions.

Section 110d - Code of Criminal Procedure

- (1) Persons whose private dwellings that are not accessible to the public have been entered by an undercover investigator shall be notified of the operation as soon as this can be done without jeopardising the purpose of the investigation, endangering public security or the life or limb of another person or compromising the possibility of further deploying the undercover investigator.
- (2) Decisions and other documents relating to use of an undercover investigator shall be kept by the public prosecution office. They shall not be placed on the files until the conditions set out in subsection 1 have been fulfilled.

Section 110e - Code of Criminal Procedure

Personal data obtained by the use of an undercover investigator may only serve as evidence in other criminal proceedings if evaluation of the data yielded information required to clear up one of the crimes listed in Section 110a(1); Section 100d(6) shall remain unaffected.

the principles governing the deployment of foreign undercover investigators are the same as those applying to civilians acting under cover, who are not the subject of specific legislation but may be called upon on the basis of the general provisions regarding investigations (Sections 161 and 163 of the Code of Criminal Procedure), which state:

Section 161

- (1) For the purpose indicated in Section 160(1) to (3), the public prosecutor's office shall be entitled to request information from all authorities and to conduct investigations of any kind, either itself or through the authorities and officers of the police, provided there are no other statutory provisions specifically regulating their powers. Those authorities and officers shall be obliged to comply with the request of, or order given by, the public prosecutor's office, and they shall be entitled in this case to request information from all authorities.
- (2) Personal information obtained in or from private a dwelling by technical means for the purpose of personal protection in a covert investigation based on police law may, subject to the principle of proportionality, be used as evidence (Article 13(5) of the Basic Law) only in cases where the legality of the measure has been established by the *Amtsgericht* (Local Court) (Section 162(1)) in whose district the office giving the order is located; if action must be taken urgently, a judicial decision must be obtained subsequently, at the earliest opportunity.

Section 163

- (1) The authorities and officers of the police force shall investigate criminal offences and shall take all immediately necessary measures to prevent suppression of the facts. To this end they shall be entitled to request information from all authorities, and – if action must be taken urgently – to demand such information, and they shall be entitled to conduct investigations of any kind unless there are other statutory provisions specifically regulating their powers.
- (2) The authorities and officers of the police force shall without delay transmit their records to the public prosecutor's office. The records may be sent directly to the local court if it appears that a judicial investigation needs to be conducted promptly.

Germany has concluded *bilateral treaties* containing rules on the deployment of undercover officers with the following States:

(a) Kingdom of the Netherlands

Treaty of 2 March 2005 between the Federal Republic of Germany and the Kingdom of the Netherlands regarding cross-border police cooperation and cooperation in criminal law matters.

Article 14

Undercover investigations for the purpose of criminal prosecution

- (1) Upon request, the requested Contracting State may approve the implementation of undercover investigations within its territory by officers of the requesting Contracting State having the position of undercover officers in accordance with the laws of the requesting Contracting State, if the latter states that without this measure there would be no prospect of clearing up the facts of the case or it would be much more difficult to do so. The approval of a request to implement an undercover investigation shall cover the entire territory of the requested Contracting State.
- (2) Additional prerequisites for undercover investigations, particularly conditions under which undercover officers may be deployed, shall be based on the laws of the requested Contracting State. The requested Contracting State may establish further requirements for the use of information obtained by means of an undercover investigation. The Contracting States shall inform one another of the prerequisites for implementing undercover investigations pursuant to their domestic law.
- (3) Undercover investigations within the territory of the requested Contracting State shall be limited to specific operations of limited duration, which shall be described in the request pursuant to subsection 1. If, when the request is submitted, it is apparent that the undercover investigations will last for a certain time, the undercover investigations may initially be approved for a period of up to three months. The approval may be extended, and the extension may be linked to amendment of the approval originally granted. The expected duration of the undercover investigations shall also be specified in the request pursuant to subsection 1. The authorities of the requesting Contracting State shall coordinate the preparation of the operation with the competent authorities of the requested Contracting State.
- (4) Operational command of the deployment shall be assigned to an officer of the requested Contracting State; to the requested Contracting State shall be responsible for the actions of the officers of the requesting Contracting State. The requested Contracting State may require that the undercover investigation be ended at any time.

- (5) The requested Contracting State shall take the necessary measures to provide the requesting Contracting State with personnel and logistical and technical support for implementing the operation and to protect the officers of the requesting Contracting State during their deployment in the territory of the requested Contracting State.
- (6) The competent authorities shall establish more detailed arrangements in regard to necessary agreement in urgent cases. "Urgent cases" within the meaning of the first sentence exist when there is a fear that without cross-border undercover investigations the identity of the officer deployed will be uncovered and the investigations endangered.
- (7) Article 8 (1) and (4) shall apply *mutatis mutandis*.
- (8) The necessary technical equipment may be carried to safeguard the operation, unless the Contracting State in whose territory the undercover investigation is being conducted expressly objects. In general the request shall list the technical equipment. Otherwise Article 11(11) shall apply *mutatis mutandis*.
- (9) The request shall be addressed to the National Police Central Office, or, with simultaneous notification of the latter, to the public prosecutor's office of the requested Contracting State which would be responsible for ordering or approving an undercover investigation that was to be conducted by the requested Contracting State's authorities. In cases in which undercover investigations in the Federal Republic of Germany are expected to be confined to border areas pursuant to Article 3(2), copies of the request shall in addition be sent to the competent State Criminal Police Offices of Lower Saxony and North Rhine-Westphalia, and the National Police Central Office shall be notified simultaneously.
- (10) The competent authorities of the Contracting State in whose territory the operation took place shall be promptly notified in writing of the implementation and results of the deployment of the undercover officers.
- (11) The Contracting States may make available to one another undercover officers who shall operate on behalf of and under the command of the competent authorities of the other Contracting State.

Extracts from Article 8:

- (1) Where urgent action is required, requests may be made in accordance with domestic law for the preservation of traces and evidence, including the carrying out of physical examinations, and for the implementation of search and seizure measures by the public prosecutor's office and law enforcement officers responsible under domestic law for ordering such measures.

Requests shall be sent directly to the competent judicial or police authorities. Any applications made orally within this framework shall be promptly confirmed in writing. (...)

- (4) Where the law of the requested Contracting State requires a court order for ordering or maintaining the measure in that State, the requesting Contracting State shall promptly provide an order or statement by the court responsible pursuant to the law of the requesting Contracting State. The Contracting States shall inform one another of the relevant provisions of their domestic law.

Extract from Article 11:

- (11) The officers of one Contracting State may use necessary technical equipment also in the territory of the other Contracting State where this is permitted under the latter's domestic law and the competent authorities of the Contracting State in whose territory the technical equipment is to be used have consented to its use in the specific case. The Contracting States shall inform one another of the technical equipment carried in a specific case.

(b) Republic of Austria

Article 14 of the Treaty of 10 November and 19 December 2003 between the Federal Republic of Germany and the Republic of Austria regarding cross-border police cooperation for countering threats and in criminal law matters contains rules on undercover investigations for the purpose of criminal prosecution, which to a large extent correspond verbatim to Article 14 of the German-Netherlands police treaty. The German-Austrian police treaty differs from the German-Netherlands police treaty as follows:

1. The second sentence of subsection (3) provides that the duration of consent is one month (instead of three months).
2. Subsection (6) states: "If because of particular urgency a request pursuant to subsection (1) cannot be presented prior to crossing the border and if there is serious concern that without cross-border undercover investigations the identity of the deployed officers would be uncovered, the deployment of undercover officers in the territory of the other Contracting State shall, as an exception, be admissible without prior consent where the remaining requirements for the deployment of undercover officers in the territory of the other Contracting State are fulfilled. The deployment shall be notified promptly to the authorities of the other Contracting State pursuant to subsection (9). A request in which the grounds justifying deployment without prior consent are also set forth shall subsequently be promptly submitted. The activities of the undercover officer shall in these cases be limited to the measures strictly necessary to maintain the operational cover."
3. Subsection (8) refers to Article 11(12), which corresponds verbatim to Article 11(11) of the German-Netherlands treaty.
4. Article 9 provides that a copy of the request must be forwarded to the State Criminal Police Offices in Baden-Württemberg and Bavaria.
5. Article 8(1) does not have a third sentence.

(c) Swiss Confederation

Treaty between the Swiss Confederation and the Federal Republic of Germany regarding cross-border police and judicial cooperation:

Article 17 Undercover Investigations for Clearing Up Criminal Offences

- (1) On the basis of a previously submitted request by one Contracting State, the other Contracting State may consent to the deployment of officers of the requesting Contracting State to clear up criminal offences under a changed identity conferred upon them ("undercover officers") in the territory of the requested Contracting State if there are sufficient factual indications that a criminal offence for which mutual legal assistance is available has been committed for which the deployment of undercover officers is permissible under the relevant domestic law. The consent granted shall apply in each case to the entire territory. The requesting Contracting State shall submit the request only if there is no prospect of clearing up the matter or it would be much more difficult to do so without the planned investigation measures. The sixth sentence of Article 14(1) shall apply *mutatis mutandis*.
- (2) The investigations in the requested Contracting State shall be limited to individual, time-limited operations. Preparation of the operations shall take place in close coordination between the participating authorities of the requested and the requesting Contracting States. Command of the operations shall be incumbent upon an officer of the requested State; acts of the officers of the requesting State shall be attributable to the State in command of the operation. The requested Contracting State may require that the investigations be ended at any time.
- (3) The requirements for the deployment of undercover officers, the conditions under which it takes place, and the rules for the use of the results of the investigations shall be established by the requested Contracting State in compliance with its domestic legal provisions. The requesting Contracting State shall be informed thereof by the requested Contracting State.

- (4) The requested Contracting State shall provide necessary personnel and technical support. All necessary measures shall be taken by the requested Contracting State to protect the officers of the requesting Contracting State during their deployment in the requested Contracting State.
- (5) If prior approval cannot be requested by the other Contracting State owing to particular urgency and if the legal requirements for the deployment of undercover officers in the other Contracting State are fulfilled, undercover officers shall as an exception be authorised to act within the territory of the other Contracting State without prior approval if there would otherwise be a risk of the changed identity being uncovered. The operation shall be promptly notified to the authorities of the other Contracting State referred to in subsection (6). A request in which the grounds justifying deployment without prior consent are also set forth shall subsequently be promptly submitted. The activities of the undercover officer shall in these cases be limited to the measures strictly necessary to maintain the operational cover. Undercover investigations pursuant to this subsection shall be limited to the border areas in accordance with Article 4(7).
- (6) The request shall be addressed to the National Central Office or, subject to concurrent notification of the National Central Office, to the authority responsible for approval. In cases in which it is anticipated that the undercover investigations in the Federal Republic of Germany will be limited to border areas within the meaning of Article 4(7), a copy of the request shall in addition be addressed to each of the responsible State Criminal Police Offices in Baden-Württemberg and Bavaria, with concurrent notification of the National Central Office.
- (7) The responsible authorities of the Contracting State in the territory of which the operation took place shall be promptly notified in writing of the implementation and results of the deployment of undercover investigators.
- (8) The Contracting States may make available to one another undercover investigators who operate on behalf of and under the command of the competent authorities of the other Contracting State.

(d) Czech Republic

Treaty of 2 February 2000 between the Federal Republic of Germany and the Czech Republic regarding the enlargement of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and simplification of its application.

Article 21 (Undercover Investigations):

- (1) If in the framework of investigations being conducted by the authorities of the requesting Contracting State based upon a criminal offence that is punishable under the laws of both Contracting States there is a need for the deployment of a police officer or an officer of another authority who pursuant to German law has the position of an undercover officer or pursuant to Czech law has the position of an "agent" – hereinafter referred to as a "police officer" – within the territory of the requested Contracting State, the latter may grant approval therefore on a specific request. The requesting Contracting State shall submit such a request only if it would be significantly more difficult to clear up the matter without the planned measure. The true identity of the police officer need not be disclosed in the request. For requests pursuant to the first sentence, the direct channel between public prosecution offices pursuant to Article 11(1) of this Treaty shall apply. The requesting authority shall concurrently inform the Central Office of the requested Contracting State referred to in subsection (8) regarding the request.
- (2) The investigations within the territory of the requested Contracting State shall be limited to individual, time-limited operations. Preparation of the operations shall be closely coordinated between the participating authorities of the Contracting States. Command of the operations and ensuring the security of the police officer shall be incumbent upon an officer of the requested Contracting State; action by police officers of the requesting Contracting State shall be attributable to the requested Contracting State. This Contracting State may require that the investigations be ended at any time.
- (3) Approval of the activities of the police officers and the conditions under which they take place shall be based upon the law of the Contracting State in the territory of which the activity occurs.

- (4) The police officer may carry with him during the operation his service weapon and any technical equipment necessary to safeguard his operation unless the requested Contracting State has expressly opposed this. Use of the service weapon shall not be admissible except in cases of self-defence.
- (5) If because of particular urgency prior approval by the other Contracting State cannot be applied for and if the legal requirements for the deployment of police officers in the territory of the other Contracting State are fulfilled, they shall as an exception be authorised without prior approval to act within the territory of the other Contracting State if there would otherwise be a danger of the changed identity being uncovered. The activities of the undercover officer shall in these cases be limited to the measures strictly necessary to maintain the operational cover and to ensure his safety. Entry shall be promptly notified to the authorities of the other Contracting State referred to in subsections (1) and (8); that Contracting State may demand that the operation be ended at any time. A request in which the grounds justifying entry without prior approval are also set forth shall subsequently be promptly submitted. Undercover operations pursuant to this subsection shall be limited to the following areas:
1. in the Federal Republic of Germany
(...)
 2. in the Czech Republic to the following districts
(...)
- (6) Subsections (1) to (4) shall apply *mutatis mutandis* when the request comes from the Contracting State in the territory of which the activity of a police officer of the other Contracting State is to take place.
- (7) The Contracting States shall take all necessary steps to keep the identity of the police officer secret even after the conclusion of his cross-border deployment and to ensure his safety.
- (8) The Central Office referred to in subsection (1) shall be
- for the Federal Republic of Germany: the Federal Criminal Police Office or – in the case of criminal activity in the cross-border movement of goods – the Customs Criminal Investigation Office;
 - for the Czech Republic: the Police Headquarters of the Czech Republic.
- (9) The above subsections do not preclude a Contracting State from deploying a police officer of its own within its territory at the request of the other Contracting State.

- (10) The above subsections do not preclude, at the request of a Contracting State, other officers of that Contracting State from undertaking undercover actions within the territory of the other Contracting State for the purpose of clearing up criminal offences. Subsections (5) and (9) shall apply *mutatis mutandis*.

Danish Law

The Administration of Justice Act Section 754 a-c

Section 754 a

(1) The police must not, as part of the investigation of an offence, prompt that assistance is offered or measures are taken with the purpose of inciting someone to commit or continue the offence, unless:

- 1) a substantiated suspicion is present that the offence is about to be committed or attempted,
- 2) the investigative measure must be presumed to be of crucial importance to the investigation, and
- 3) the investigation concerns an offence that under the law can be punished by imprisonment for six years or more.

(2) Measures, which are taken with the purpose of inciting someone to commit or continue an offence, are not included under Subsection 1 if the police do not, hereby, affect significant circumstances of the offence.

Section 754 b

(1) The measures, which are mentioned in Section 754 a, must not cause an aggravation of the extent or seriousness of the offence.

(2) The measures may only be conducted by police officers. Civilians may, however, as arranged with the police, render assistance to commit or continue the offence, which is being investigated, when the rendered assistance is extremely minor in proportion to the offence.

Section 754 c

(1) Measures under Section 754 a are implemented following an order of the court. The matter hereof is submitted to the court where prosecution is or can be expected to be initiated or otherwise where the decision is made by the police to seek implementation of the measures.

(2) The court order shall state the specific circumstances in the case upon which it is based that the conditions for the implementation of the measures are fulfilled. The court order can at any time be reversed.

(3) If the purpose of the measures would be forfeited if a court order were to be awaited, the police can make the decision of implementing the measures. In that case the police shall, as soon as possible, and at the latest within 24 hours from the initiation of the measures, submit the case to the court. The court decides in the form of an order if the measures can be approved and whether they can be upheld. If, in the opinion of the court, the measures should not have been conducted, the court shall give notice hereof to the Ministry of Justice.

Section 754 d

(1) Where measures as mention in section 754 a have executed and an indictment is brought, the defence attorney shall be notified of the measures. If the regard for foreign powers, the security of the State, the clearing up of the case, or a third party as an exception makes it necessary, the police can order the defence attorney not to disclose information that he may have received in pursuance of the 1st sentence hereof.

Section 754 e

(1) The rules of sections 754 a-754 d shall not apply to investigation of violations of Part 12, Section 111- 115 and 188 of the Danish Criminal Code.

Dutch Law

Dutch legislation and regulations:

- Article 126h, paragraph 4, item a of the Dutch Code of Criminal Procedure, Article 126p, paragraph 4 item a of the Dutch Code of Criminal Procedure
- Special Investigative Powers (Cooperation) Decree, Netherlands Government Gazette 1999, 549
- Regulation governing infiltration teams, Netherlands Government Gazette 2000, 7
- Regulation governing the financial management of infiltration, Netherlands Government Gazette 1998, 141

Treaties and conventions:

- European Convention on Mutual Assistance in Criminal Matters of 20 April 1959
- Additional protocol to the European Convention on Mutual Assistance in Criminal Matters of 17 March 1978
- Agreement for the implementation of the Schengen Agreement dated 19 June 1990

Estonian Law

Code of Criminal Procedure

§ 120. Police agent

- (1) “Police agent” means an official who collects evidence in a criminal proceeding by using a false identity. Identity documents and other documents may be issued in order to change the identity of a person.
- (2) A police agent may participate in legal relationships under a false identity. A police agent has all the obligations of an official of an investigative body in so far as the obligations do not require disclosure of the false identity.
- (3) A police agent may be involved on the basis of an order of the Public Prosecutor's Office. Permission for the involvement of a police agent is granted for up to six months and the permission may be extended by six months at a time.
- (4) Permission for the involvement of a police agent with regard to a specific suspect or accused is granted pursuant to the provisions of subsection 114 (1) of this Code.
- (5) Information collected by a police agent shall be recorded pursuant to the procedure provided for in § 74 of this Code. The statements of a police agent are used as evidence pursuant to the provisions of this Code concerning witnesses.
- (6) The identity of a police agent shall remain confidential also after completion of the surveillance activities if disclosure of his or her identity may endanger his or her life or health or his or her further engagement as a surveillance officer, or if confidentiality is necessary for any other reason.

Spanish Law

Rules of Criminal Procedure, Article 282B.

Finnish Law

Police Act

(493/1995; amendments up to 315/2001 included)

(...)

Chapter 3

Provisions on gathering information

Section 28

Definitions

For the purposes of this Act:

- 1) *technical monitoring* means the continuous or repeated viewing of or listening to members of the public, vehicle drivers, pedestrians or vehicles with the help of technical devices, or the automatic recording of voices or images;
- 2) *surveillance* means the continuous or repeated gathering of information on certain persons or their activities;
- 3) *technical surveillance* means the continuous or repeated listening to certain persons with the help of technical devices and the recording of voices (*interception*), viewing and photographing (*technical observation*), and the tracking of the movements of vehicles and goods (*technical tracking*);
- 4) *undercover operations* mean continuous or repeated gathering of information on individual persons or groups of persons or their activities with the help of infiltration;

- 5) *pseudo purchase* means a purchase offer made by the police with the aim of preventing, uncovering or investigating an offence, or with the aim of recovering the proceeds from an offence, or the purchase of an object, substance or property that can be considered a sample unless the prevention, uncovering or investigation of an offence, or the recovery of the proceeds from an offence necessitate the purchase of a batch larger than a sample or the purchase of an object, substance or property as an entity of certain size;
- 6) *telecommunications monitoring* means the obtaining of secret identification data on telemessages that have been sent to a public communications network referred to in the Communications Market Act (393/2003) or from a telecommunications subscriber connection connected to a communications network linked with the public communications network, from an e-mail address or another telecommunications address or a telecommunications terminal device, or received at such a telecommunications subscriber connection, telecommunications address or a telecommunications terminal device, and the obtaining of location data of mobile stations and the temporary disconnection of such a telecommunications subscriber connection or a telecommunications terminal device;
- 7) *telecommunications interception* means the secret listening to or recording of messages from or to a telecommunications subscriber connection, a telecommunications address or a telecommunications terminal device sent through the communications network referred to in paragraph 6, so that the content of the message can be determined;
- 8) *use of human intelligence sources* means the gathering of information using persons outside the police administration as information sources.

Provisions on telecommunications interception, telecommunications monitoring and technical surveillance for investigating an offence are laid down in the Coercive Measures Act (450/1987).

Section 29

Preconditions for technical monitoring

After giving prior notification, the police have the right to carry out technical monitoring in a public place or on a public road in order to maintain public order and security, prevent offences, identify a person suspected of an offence and guard special targets to be monitored.

Section 30

Preconditions for surveillance

Police officers have the right to keep persons under surveillance in places other than a residence in order to prevent or discontinue an offence if the person's behaviour or other circumstances give justifiable cause to suspect that he or she would commit an offence.

For a purpose referred to in subsection 1, surveillance can also apply to persons outside domestic premises who can with justifiable cause be suspected of contributing to an offence for which the maximum punishment provided is more severe than six months' imprisonment.

Section 30a

Surveillance by a police officer of a foreign State (315/2001)

Police officers of a foreign State applying the Schengen acquis who are referred to in Article 40 or 41 of the Schengen Convention have the right to continue surveillance in the territory of Finland or technical surveillance of a person that was started in the territory of the police officer's country and that is taking place for investigating an offence, as provided in the Schengen acquis binding on Finland. A further precondition is that Finnish police officers are not immediately able to continue surveillance or technical surveillance in the territory of Finland.

Technical devices that Finnish police officers are authorised to use in accordance with the provisions on technical surveillance may be utilised in surveillance. A report on the surveillance and technical surveillance shall be submitted to the district police within whose geographical area of operation most of the measure was taken.

Section 31

Preconditions for technical surveillance (21/2001)

Police officers have the right to keep a person, vehicle or goods under technical surveillance in places other than a room or space used for permanent living if it can be justifiably assumed that information necessary for preventing an offence can be obtained with such a measure. Under the same preconditions, persons serving a sentence in prison or confined in an institution for preventive detention or in pre-trial detention can be kept under technical surveillance while they are in their cell or in other premises of an institution used by inmates.

If technical surveillance so requires, a device used in technical surveillance may be placed in premises where technical surveillance is allowed under subsection 1. On the order of a commanding police officer, a police officer may access the premises in question in order to install and remove the device. If the device consumes energy produced by a vehicle or the premises in which it is placed, compensation shall be given for consumption which is higher than a minimal level.

Another precondition for technical surveillance is that the person's behaviour or other circumstances give justifiable cause to suspect that the person could commit an offence for which the maximum punishment is at least four years' imprisonment or could commit a narcotics offence. Correspondingly, the precondition for technical observation and technical tracking is that the person's behaviour or other circumstances give justifiable cause to suspect that the person could commit an offence for which the maximum punishment is more than six months' imprisonment or could contribute to committing such an offence. However, if technical observation is carried out on persons referred to in subsection 1 who are in the custody of the Prison Administration, the requirement is that their behaviour or other circumstances give justifiable cause to suspect that they could commit an offence for which the maximum punishment is at least four years' imprisonment or that they could commit a narcotics offence.

Police officers also have the right to keep a person under technical surveillance in a place of residence immediately before and during police measures if this is essential for the measures to be taken safely and to prevent immediate danger to the life or health of persons taking the measure or the person to be apprehended or protected.

Section 31a

Preconditions for undercover activities (525/2005)

Police officers have the right to undertake undercover operations if they are necessary for preventing, uncovering or investigating criminal activities referred to in chapter 5a, section 2 of the Coercive Measures Act or an offence referred to in chapter 17, section 18, subsection 1, paragraph 1 of the Penal Code or a punishable attempt of such an offence and the behaviour of the persons on whom information will be gathered or other circumstances give justifiable cause to suspect that they could commit the offence in question. Undercover operations in places of residence are permitted if the entry or stay in the place of residence is with the active assistance of the occupant. However, provisions in the Coercive Measures Act apply to the search of premises.

Section 31b

Preconditions for pseudo purchases (525/2005)

Police officers have the right to make pseudo purchases if this is necessary for preventing, uncovering or investigating a receiving offence or a theft or an offence for which the maximum punishment is at least two years' imprisonment, or for recovering an object, substance or property held or sold illegally as a result of such an offence, or for recovering the proceeds from such an offence.

Section 31c

Preconditions for telecommunications monitoring (21/2001)

To prevent or detect an offence, police officers have the right to subject to telecommunications monitoring, a subscription or terminal in a person's possession or assumed to be otherwise used by the person, or to temporarily disconnect such a subscription or terminal, if the person's statements, threats or behaviour or other circumstances give justifiable cause to suspect that the person would commit an offence for which the punishment is no less than four months' imprisonment, an offence concerning an automatic data processing device and involving use of a terminal, an offence of menace or of threatening a person who is to be heard in judicial proceedings, or a narcotics offence. In addition, police officers have the right to use telecommunications monitoring in a situation referred to in section 18(2) or in any other situation if this is essential to prevent a danger to life or health.

Section 31d

Prohibitions on interception (21/2001)

Provisions on prohibition of interception concerning suspects laid down in Chapter 5a, section 10 of the Coercive Measures Act also apply to other interception activities under this Act than those that concern suspects.

Section 32

Deciding on technical surveillance

An order to carry out a measure referred to in section 31(1) shall be given by a commanding police officer or a police officer appointed as investigator in charge, or, in the case of interception lasting more than three days, by a police officer with the rank of chief of a police district, chief of a national police unit or deputy chief of such a unit.

A commanding police officer shall be informed without delay of any measure taken under section 31(4). (21/2001)

Section 32a

Deciding on undercover operations and pseudo purchases and supervising undercover operations and pseudo purchases (525/2005)

The decision on undercover operations is made by the head of a police unit that is prescribed by Ministry of the Interior decree.

The decision on pseudo purchases is made by the head of a district police department, the National Bureau of Investigation or the Security Police, or a commanding police officer to whom he/she has given responsibility for such decisions.

The police unit which has decided on undercover operations and pseudo purchases must prepare a report on the operations for the Ministry of the Interior, which shall submit an annual report on the use of undercover operations and pseudo purchases to the Parliamentary Ombudsman.

Section 32b

Court decisions on telecommunications monitoring and technical surveillance, and other handling of such matters (21/2001)

The court referred to in Chapter 1, section 9 of the Coercive Measures Act, or another court in which the matter can be dealt with, shall decide on the use of telecommunications monitoring and technical surveillance in cases referred to in section 31(2) in which interception or technical observation requires placing a surveillance device in a room or premises where the person under surveillance is staying or inside a vehicle used by the person under surveillance or where a person in the custody of the Prison Administration is subjected to interception or technical observation. Matters referred to in subsection 1 above are decided without hearing the occupant of the facilities to be intercepted or observed. However, when a court deals with a case in which the person subjected to interception or technical observation is in the custody of the Prison Administration, the director of the prison shall be reserved an opportunity to be heard.

The provisions in Chapter 5a, sections 5-9, 11(1), 12 and 14 of the Coercive Measures Act also apply, as appropriate, to processing cases referred to in subsection 1 above.

Section 32c

*The right of a police officer to decide on telecommunications monitoring and technical surveillance
in urgent situations (21/2001)*

A commanding police officer has the right to decide to start telecommunications monitoring or technical surveillance as referred to in section 32b(1) if it is essential to do so without delay due to the urgency of the matter. In such cases, the court referred to in section 32b(1) shall be notified of the measures without delay, and no later than 24 hours after the start of the measures. A request for telecommunications monitoring or technical surveillance shall be attached to the notification if the aim is to continue telecommunications monitoring or technical surveillance after the court has received the notification.

The right referred to in subsection 1 above does not apply to interception or technical observation concerning a person in the custody of the Prison Administration.

Section 32d

*Continuing telecommunications monitoring and technical surveillance when the decision on the
measures was made by a police officer (21/2001)*

When the court receives a notification under section 32c(1), it may prohibit the continuation of telecommunications monitoring or technical surveillance or set limitations on the use of the measures or conditions on the use of information as it sees fit.

Provisions in Chapter 5a, sections 5-9, 11(1), 12 and 14 of the Coercive Measures Act apply, as appropriate, to processing a case in court.

Section 33

Notification of surveillance, technical surveillance and telecommunications monitoring

Police officers who decided on the use of technical surveillance as referred to in section 31(1) above or on the placing of a technical surveillance device as referred to in section 31(2) or on the use of telecommunications monitoring under section 32c, or who notified the court shall inform the person subjected to technical surveillance or telecommunications monitoring of the measures after they have been concluded, unless such notification would endanger the purpose of gathering the information or the pre-trial investigation of an offence.

No notification is required of the use of surveillance or technical surveillance as referred to in section 31(4) or of the grounds for these measures.

Police officers who carried out interception as referred to in section 31 or telecommunications monitoring as referred to in sections 32b and 32c shall prepare an official record of the measures without delay. Further provisions on the content of the record are given by decree. The official record shall be submitted to the Ministry of the Interior, which submits an annual report to the Parliamentary Ombudsman on the use of the interception and telecommunications monitoring measures referred to in this subsection. A report on the use of technical surveillance in prisons shall also be given at the same time.

Section 33a

Preventing the disclosure of information gathering (525/2005)

The police may, when it is essential for preventing the disclosure of surveillance, technical surveillance, pseudo purchases, infiltration and activities involving the use of information sources, use misleading or forged information, make and use misleading or forged register entries and produce and use false documents.

The head of a police unit that is prescribed by Ministry of the Interior decree shall decide on the making of the register entries and of the production of the documents referred to in subsection 1 above.

The police unit deciding on the making of the register entries and the production of the documents must keep records on the entries and documents, supervise their use and see to the correction of the entries.

A commanding police officer shall decide on the use of the register entries and documents. The police unit deciding on the making of the register entries or the production of the documents, and the police unit deciding on the use of the register entries or the documents must draw up a report on the making of the entries, production of the documents and the use of the entries and the documents for the Ministry of the Interior, which must submit an annual report to the Parliamentary Ombudsman on the matter.

Section 33b

Correction of register entries (525/2005)

The register entry referred to in section 33a above must be corrected when the correction no longer endangers the purpose of the information gathering or the pre-trial investigation of an offence or when it is no longer necessary for preventing the information gathering from being disclosed.

Section 34

Processing material

A commanding police officer shall examine without delay the information obtained from measures referred to in sections 30-31 and the recordings acquired with the help of technical surveillance as referred to in section 31. Information solely concerning third parties shall be destroyed without delay after being examined if it is not needed for the investigation of an offence.

Separate provisions shall be issued regarding entry of the information referred to in subsection 1 in police personal data files. Information and recordings obtained that are not added to a data file or the pre-trial investigation material shall be destroyed no later than one year after being declared almost certainly unnecessary for the purpose for which it was obtained.

Section 35

Obtaining information from authorities

The police have the right, notwithstanding the obligation to observe secrecy, to obtain free of charge from an authority or a body assigned to perform a public function any information and documents necessary to carry out an official duty unless disclosing such information or documents to the police or using information as evidence is prohibited or restricted by law.

When assessing the continued validity of a driving licence, firearms permit or other such licence, the police have the right, on making a justified request, to obtain information on the licence holder's state of health, use of intoxicants or violent behaviour, notwithstanding the obligation to observe secrecy, if there are reasons to suspect that the licence holder no longer meets the conditions set for obtaining a licence.

The decision on obtaining confidential information in cases referred to in subsections 1 and 2 is taken by a commanding police officer.

The police may only use confidential information received on the basis of subsection 2 above to assess the credibility and suitability of a licence holder or some other condition for validity of the licence or fulfilment of a condition included in the licence.

Section 36

Obtaining information from a private organisation or person

At the request of a commanding police officer, the police have the right to obtain any information necessary to prevent or investigate an offence, notwithstanding business, banking or insurance secrecy binding members, auditors, managing directors, board members or employees of an organisation. The police have the same right to obtain information needed in a police investigation as referred to in section 37 if an important public or private interest so requires. (21/2001)

The police have the right to obtain from organisations engaged in telecommunications services contact information of telecommunication subscriptions that are not listed in a public directory if the information is needed in an individual case to carry out a police duty. The police have a similar right to obtain information on postal addresses from organisations engaged in postal services.

For licence administration purposes, the police have the right to obtain information from private organisations and persons as provided in section 35(2)-(4).

Section 36a

Activities concerning human intelligence sources (525/2005)

The police may, for carrying out its duties laid down in section 1, use persons outside the police administration as human intelligence sources.

The information on the human intelligence source may be entered in a personal data file. The processing of the information must be in accordance with the Act on the Processing of Personal Data by the Police (761/2003).

The person used as a human intelligence source may be paid a fee. The precondition for paying the fee is that the human intelligence source is registered. The fee may, on reasonable grounds, also be paid to a person used as an human intelligence source who has not been registered. Separate provisions apply to the taxability of the fee.

Act on the implementation of the provisions of a legislative nature of the Act on Mutual Assistance in Criminal Matters and on the application of the Convention (148/2004) section 3.

Act on International Legal Assistance in Criminal Matters (4/1994) section 23.

Act on the implementation of the provisions of a legislative nature of Convention on Mutual Assistance and Cooperation between Customs Administrations (427/2004) section 2.

French Law

Les textes permettant d'utiliser des agents étrangers dans le cadre d'opérations d'infiltration sont :

- la loi n° 2004-204 du 9 mars 2004 portant adaptation de la justice aux évolutions de la criminalité créant les articles 706-81 à 706-87 du code de procédure pénale en matière d'infiltration, les articles 694-7, 694-8 du code de procédure pénale en matière de coopération judiciaire et l'article 695-2 du code de procédure pénale en matière d'équipes communes d'enquête;
- le décret n° 2004-1026 du 29 septembre 2004 portant modification du code de procédure pénale pris pour l'application des articles 706-81 et suivants de ce code relatifs à l'habilitation des agents chargés de participer à des opérations d'infiltration et des articles 706-99, relatifs à la sonorisation et à la fixation d'image de certains lieux ou véhicules, insérant les articles D.15-1-1 à D.15-1-5 dans le code de procédure pénale;

Hungarian Law

Section 64 of the Act No. XXXIV of 1994 on Police:

- (1) In order to carry out criminal law enforcement tasks defined in Article 63 (1) the Police [...]
- b) may collect information, by using undercover officer covering either true identity or the Police nature of the inquiry,
- c) for the protection of Police personnel and persons co-operating therewith, and to disguise Police nature of activity, may prepare and use cover documents, may establish, maintain and operate cover institution (front company), [...]
- f) for the purpose of performing sample-buy operations, may use confidential informants, other persons secretly co-operating with the Police or undercover officer, moreover, with the permission of the public prosecutor, for the purposes of pseudo-purchase and controlled buy operations, infiltration of criminal organisations and, with regard to the provisions of Paragraph 4 of Article 2, for the purpose of controlled delivery operations, may use Undercover Detective.
- g) in case there is no other way to prevent and investigate the criminal offence, to arrest the perpetrator and find his identity, for the protection of life and health of the victim, may replace the victim in his role as such with a Police officer.

Section 25-26 of the Act No. LIV of 2002 on the International Cooperation of Law Enforcement Agencies:

Section 25

- (1) If the application of Hungarian undercover officer abroad or application of foreign undercover officer in Hungary is necessary, the ILECC [...] may initiate such action at the foreign authority.

(2) If, for the interest of crime detection operation lead by a foreign law enforcement agency, the application of foreign undercover officer in Hungary or the application of Hungarian undercover officer abroad is necessary, upon the request of the foreign authority and – in cases stated in Paragraph (1) f) of Article 64 of the Act on Police¹ – with the authorisation of the prosecutor, foreign undercover officer may be applied in Hungary or Hungarian undercover officer may be applied abroad.

Section 26

(1) Application of the undercover officer shall be based on the individual arrangement between the Hungarian central law enforcement agency and the foreign authority.

(2) The arrangement shall include the followings:

- a) the time period of the intelligence gathering;
- b) the requirements of the application;
- c) the rights and the obligations of the undercover officer;
- d) measures applicable in case of revelation of the undercover officer;
- e) information about the liability for damages caused by the undercover officer in the course of his/her operation.

Act no. CXXX of 2003 on Cooperation in Criminal Matters with the Member States of the European Union

Deployment of undercover officers

Section 60.

(1) Where the deployment of an undercover officer of a Member State in the territory of the Republic of Hungary, or the deployment of a Hungarian undercover officer in the territory of a European Union Member State is required to ensure the efficiency of the criminal prosecution conducted by the judicial or investigating authority of the Member State, at the request of the judicial or investigating authority of the Member State an undercover officer of the Member State may be deployed in the territory of the Republic of Hungary, or a Hungarian undercover officer may be deployed in the territory of the European Union Member State.

¹ Paragraph (1) f) of Article 64 of the Act on Police states that permission of the prosecutor is needed if the undercover agent cover makes false purchases, confidence purchases, or infiltrates into a criminal organisation, as well as if participates in controlled delivery.

(2) Where the deployment of a Hungarian undercover officer in the territory of a European Union Member State or the deployment of an undercover officer of a Member State in the territory of the Republic of Hungary is required to ensure the efficiency of ongoing criminal prosecution conducted in the territory of the Republic of Hungary, the Prosecutor General may request this from the judicial or investigating authority of the Member State.

Section 61

(1) The deployment of an undercover officer shall take place on the basis of a specific agreement concluded between the Prosecutor General and the judicial or investigating authority of the Member State.

(2) The agreement referred to in paragraph (1) shall include, in particular, the following:

- a)* the duration of deployment of the undercover officer,
- b)* the conditions of deployment,
- c)* the rights and obligations of the undercover officer,
- d)* the measures to be taken in the event that the undercover officer is exposed,
- e)* information on the rules concerning the liability of the undercover officer for any damages caused while acting within his or her competence.

(3) Section 58 shall be applied, as appropriate, if the undercover officer of the Member State is operating in the territory of the Republic of Hungary.

Italian Law

Undercover operations are governed by law. In particular, Law No. 146 of 16th March 2006 ratified the Convention against Transnational Organised Crime and its Protocols adopted by the UN General Assembly on 15th November 2000 and on 31st May 2001, introducing new provisions on special operations and subjects entitled to perform them as well as on the authorized behaviour.

Latvian Law

The legal basis of the deployment of foreign undercover officers is as follows:

Investigatory Operations law, Law of Criminal procedure, Law on Official Secrets and memorandum of understanding between involved agencies (int.al. bilateral agreements with Estonia and Lithuania on cross-border cooperation in fight against organized crime).

Lithuanian Law

In the course of operational actions being conducted the deployment of an undercover officer of a foreign state is governed by international legal acts, domestic laws and internal rules of the Police Department which provide for the fact that a permission to act for a foreign undercover officer in Lithuania is given by Police Commissioner General.

In the course of the pre-trial investigation, the undercover officer of a foreign state acts according to the common procedure defined under the Code of Criminal Procedure as a "person" (paragraph 6 of Article 158 of the Code of Criminal Procedure defines the following: "In special cases when there are no other possibilities to detect the persons committing criminal offences, investigation may be also conducted by persons who are not officers of the pre-trial investigation in the manner specified in this Article")

Polish Law

There is a national legislation governing the use of undercover officers - art. 19a and 19b Police Act of 1990 amended in July 1995 (or Art. 9 f and 9g of the Border Guard Act accordingly) to conduct controlled purchases and controlled deliveries, using law enforcement officers in an undercover capacity and the guidelines for undercover procedures and each time signed Memorandum of Understanding between two countries.

Portuguese Law

“Article 160 B

Undercover action

1. Criminal investigation officials of other States may develop undercover action in Portugal, in accordance with the applicable law; in such cases, their status shall be similar to that of Portuguese criminal investigation officials.
2. Action as mentioned in paragraph 1 above is subject both to a request based on an international agreement, treaty or convention, and reciprocity.
3. The judge of the "Tribunal Central de Instrução Criminal" (Central Court of Criminal Investigation) shall be empowered to authorise such action, upon a proposal of the Public Prosecution magistrate at the "Departamento Central de Investigação e Acção Penal - DCIAP" (Central Department for Criminal Investigation and Action)”
(INTERNATIONAL JUDICIAL CO-OPERATION IN CRIMINAL MATTERS, LAW No. 144/99, of 31 August).

Romanian Law

The informers are authorised according to the provisions of Law 39/2003 regarding prevention and fighting organized crime.

The collaborators are authorised according to the provisions of Law 143/2000 for fighting trafficking and illegal consumptions of drugs

Slovakian Law

As regards the use of the undercover agent in the criminal proceedings the provisions of Code of Criminal Procedure - Article 10 paragraph 19 and Article 117 paragraph 14 are applicable. For wording please see below.

The international legal basis is regulated in the 2000 MLA Convention.

The conditions of the activities of the foreign undercover agents are further elaborated in number of bilateral police treaties (with Austria and Hungary).

Slovenian Law

ARTICLE 155 A PARAGRAPH 2 (PROCEDURAL CODE)

Covert operations shall be conducted with the involvement of undercover operatives and through the constant or repeated gathering of information on the particular person and his/her criminal activity. Covert operations under the direction and supervision of the Police, shall be performed by one or more undercover operatives with the help of false information on the person, false data in the database and with the use of false documents in order to prevent the disclosure of the purpose of gathering information and undercover involvement. The undercover operative may be a police officer, a police employee of a foreign country or, exceptionally, another person in case the covert operation cannot be conducted otherwise. The undercover operative may, under the conditions of this of Article, participate in legal transactions with false documents, and may, under the conditions of this Article, also use technical devices for the sound transmission and recording, photographing and video recording.

Swedish Law

General principles developed in connection to the Swedish Police Act (1984:387) constitutes the legal basis and the Act (2003:1174) on certain aspects of international co-operation in criminal matters. Unfortunately, no authorised translation exists.

United Kingdom Law

Authorisation of the conduct of undercover officers in England, Wales and Northern Ireland, whether domestic or foreign, is made under sections 26, 29 and 30 of the Regulation of Investigatory Powers Act 2000 www.opsi.gov.uk/acts/acts2000/20000023.htm and in Scotland, under Sections 1, 7 and 8 of the Regulation of Investigatory Powers (Scotland) Act 2000 www.opsi.gov.uk/legislation/scotland/acts2000/20000011.htm
