

**Co-operation against crime:  
the conventions of the Council  
of Europe**

French version:

*Coopération contre la criminalité: les conventions du Conseil de l'Europe*

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## Foreword

The fight against today's new forms of criminality such as economic and organised crime, terrorism, cybercrime, trafficking in human beings, across Europe and beyond, can only succeed if we have the necessary tools, in particular in the form of highly effective international co-operation in criminal matters.

Because a national border traditionally marks the point where the powers of one national justice system end and the powers of another system begin, it is difficult, if not impossible, for judges or the police to reach individuals across those borders. The result may well be that it is possible for a person to commit a crime, and by leaving the country, to escape prosecution. Co-operation among States is therefore essential in order to ensure security of our citizens by allowing for efficient prosecution of suspected criminals across national borders

The events of recent years have shown the need to set up reliable and efficient co-operation channels. The need for an international response to international criminality has meant that such co-operation should be enshrined in a clear and modern legal basis, in order to deal with difficult and complex situations while avoiding disputes occurring among the interested States. As is the vocation of the Council of Europe, such an international response should also be carried out in full respect of individual human rights and the rule of law.

For over fifty years now, a series of some thirty treaties have been negotiated within the Council of Europe in the criminal field. They establish a common legal basis for co-operation in criminal matters across Europe and sometimes beyond. These treaties cover such co-operation mechanisms as extradition, mutual legal assistance and the transfer of sentenced persons, but they also address specific forms of crime which more often than others have a cross border dimension, such as cyber-crime, money laundering, terrorism, trafficking in human beings, corruption.

This compendium gathers together in one volume the main Council of Europe Conventions established to ensure effective co-operation in the fight against various forms of criminality.

I consider that this publication is very timely and I am confident that it will contribute to the current Council of Europe endeavours to improve the efficiency of international co-operation in criminal matters. This

matter is vital in order to reach the objective, adopted at the 3rd Summit of Heads of State and Government in May 2005, of strengthening the security of European citizens.

Guy De VEL

Director General of Legal Affairs  
Strasbourg, August 2006

No.	Title	Opening of the treaty	Entry into force
024	European Convention on Extradition	13/12/1957	18/4/1960
030	European Convention on Mutual Assistance in Criminal Matters	20/4/1959	12/6/1962
051	European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders	30/11/1964	22/8/1975
052	European Convention on the Punishment of Road Traffic Offences	30/11/1964	18/7/1972
070	European Convention on the International Validity of Criminal Judgments	28/5/1970	26/7/1974
071	European Convention on the Repatriation of Minors	28/5/1970	
073	European Convention on the Transfer of Proceedings in Criminal Matters	15/5/1972	30/3/1978
082	European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes	25/1/1974	27/6/2003
086	Additional Protocol to the European Convention on Extradition	15/10/1975	20/8/1979
088	European Convention on the International Effects of Deprivation of the Right to Drive a Motor Vehicle	3/6/1976	28/4/1983
090	European Convention on the Suppression of Terrorism	27/1/1977	4/8/1978
097	Additional Protocol to the European Convention on Information on Foreign Law	15/3/1978	31/8/1979
098	Second Additional Protocol to the European Convention on Extradition	17/3/1978	5/6/1983
099	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters	17/3/1978	12/4/1982
101	European Convention on the Control of the Acquisition and Possession of Firearms by Individuals	28/6/1978	1/7/1982
112	Convention on the Transfer of Sentenced Persons	21/3/1983	1/7/1985
116	European Convention on the Compensation of Victims of Violent Crimes	24/11/1983	1/2/1988
119	European Convention on Offences relating to Cultural Property	23/6/1985	
141	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime	8/11/1990	1/9/1993
156	Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances	31/1/1995	1/5/2000
167	Additional Protocol to the Convention on the Transfer of Sentenced Persons	18/12/1997	1/6/2000

172	Convention on the Protection of Environment through Criminal Law	4/11/1998	
173	Criminal Law Convention on Corruption	27/1/1999	1/7/2002
182	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters	8/11/2001	1/2/2004
185	Convention on Cybercrime	23/11/2001	1/7/2004
189	Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems	28/1/2003	1/3/2006
190	Protocol amending the European Convention on the Suppression of Terrorism	15/5/2003	
191	Additional Protocol to the Criminal Law Convention on Corruption	15/5/2003	1/2/2005
196	Council of Europe Convention on the Prevention of Terrorism	16/5/2005	
197	Council of Europe Convention on Action against Trafficking in Human Beings	16/5/2005	
198	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism	16/5/2005	

The text of the conventions and other relevant information are available on [www.conventions.coe.int](http://www.conventions.coe.int)

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# **European Convention on Extradition**



## European Convention on Extradition

Paris, 13.XII.1957, ETS No. 24

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that this purpose can be attained by the conclusion of agreements and by common action in legal matters;

Considering that the acceptance of uniform rules with regard to extradition is likely to assist this work of unification,

Have agreed as follows:

### **Article 1 – Obligation to extradite**

The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.

### **Article 2 – Extraditable offences**

- 1 Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.
- 2 If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.
- 3 Any Contracting Party whose law does not allow extradition for certain of the offences referred to in paragraph 1 of this article may, in so far as

it is concerned, exclude such offences from the application of this Convention.

- 4 Any Contracting Party which wishes to avail itself of the right provided for in paragraph 3 of this article shall, at the time of deposit of its instrument of ratification or accession, transmit to the Secretary General of the Council of Europe either a list of the offences for which extradition is allowed or a list of those for which it is excluded and shall at the same time indicate the legal provisions which allow or exclude extradition. The Secretary General of the Council shall forward these lists to the other signatories.
- 5 If extradition is subsequently excluded in respect of other offences by the law of a Contracting Party, that Party shall notify the Secretary General. The Secretary General shall inform the other signatories. Such notification shall not take effect until three months from the date of its receipt by the Secretary General.
- 6 Any Party which avails itself of the right provided for in paragraphs 4 or 5 of this article may at any time apply this Convention to offences which have been excluded from it. It shall inform the Secretary General of the Council of such changes, and the Secretary General shall inform the other signatories.
- 7 Any Party may apply reciprocity in respect of any offences excluded from the application of the Convention under this article.

### **Article 3 – Political offences**

- 1 Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.
- 2 The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.
- 3 The taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed to be a political offence for the purposes of this Convention.
- 4 This article shall not affect any obligations which the Contracting Parties may have undertaken or may undertake under any other international convention of a multilateral character.

### **Article 4 – Military offences**

Extradition for offences under military law which are not offences under ordinary criminal law is excluded from the application of this Convention.

#### **Article 5 – Fiscal offences**

Extradition shall be granted, in accordance with the provisions of this Convention, for offences in connection with taxes, duties, customs and exchange only if the Contracting Parties have so decided in respect of any such offence or category of offences.

#### **Article 6 – Extradition of nationals**

- 1 a A Contracting Party shall have the right to refuse extradition of its nationals.
  - b Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term “nationals” within the meaning of this Convention.
  - c Nationality shall be determined as at the time of the decision concerning extradition. If, however, the person claimed is first recognised as a national of the requested Party during the period between the time of the decision and the time contemplated for the surrender, the requested Party may avail itself of the provision contained in sub paragraph a of this article.
- 2 If the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The requesting Party shall be informed of the result of its request.

#### **Article 7 – Place of commission**

- 1 The requested Party may refuse to extradite a person claimed for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory.
- 2 When the offence for which extradition is requested has been committed outside the territory of the requesting Party, extradition may only be refused if the law of the requested Party does not allow prosecution for the same category of offence when committed outside the latter Party's territory or does not allow extradition for the offence concerned.

#### **Article 8 – Pending proceedings for the same offences**

The requested Party may refuse to extradite the person claimed if the competent authorities of such Party are proceeding against him in respect of the offence or offences for which extradition is requested.

#### **Article 9 – *Non bis in idem***

Extradition shall not be granted if final judgment has been passed by the competent authorities of the requested Party upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested Party have decided either not to institute or to terminate proceedings in respect of the same offence or offences.

#### **Article 10 – Lapse of time**

Extradition shall not be granted when the person claimed has, according to the law of either the requesting or the requested Party, become immune by reason of lapse of time from prosecution or punishment.

#### **Article 11 – Capital punishment**

If the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death penalty will not be carried out.

#### **Article 12 – The request and supporting documents**

- 1 The request shall be in writing and shall be communicated through the diplomatic channel. Other means of communication may be arranged by direct agreement between two or more Parties.
- 2 The request shall be supported by:
  - a the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;
  - b a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and
  - c a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.

#### **Article 13 – Supplementary information**

If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance

of this Convention, the latter Party shall request the necessary supplementary information and may fix a time limit for the receipt thereof.

#### **Article 14 – Rule of speciality**

- 1 A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases:
  - a when the Party which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention;
  - b when that person, having had an opportunity to leave the territory of the Party to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.
- 2 The requesting Party may, however, take any measures necessary to remove the person from its territory, or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time.
- 3 When the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

#### **Article 15 – Re extradition to a third state**

Except as provided for in Article 14, paragraph 1.b, the requesting Party shall not, without the consent of the requested Party, surrender to another Party or to a third State a person surrendered to the requesting Party and sought by the said other Party or third State in respect of offences committed before his surrender. The requested Party may request the production of the documents mentioned in Article 12, paragraph 2.

#### **Article 16 – Provisional arrest**

- 1 In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.
- 2 The request for provisional arrest shall state that one of the documents mentioned in Article 12, paragraph 2.a, exists and that it is intended to

send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought.

- 3 A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request.
- 4 Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.
- 5 Release shall not prejudice re arrest and extradition if a request for extradition is received subsequently.

#### **Article 17 – Conflicting requests**

If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the requested Party shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.

#### **Article 18 – Surrender of the person to be extradited**

- 1 The requested Party shall inform the requesting Party by the means mentioned in Article 12, paragraph 1, of its decision with regard to the extradition.
- 2 Reasons shall be given for any complete or partial rejection.
- 3 If the request is agreed to, the requesting Party shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.
- 4 Subject to the provisions of paragraph 5 of this article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 15 days and shall in any case be released after the expiry of 30 days. The requested Party may refuse to extradite him for the same offence.
- 5 If circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited, it shall notify the other Party. The



two Parties shall agree a new date for surrender and the provisions of paragraph 4 of this article shall apply.

#### **Article 19 – Postponed or conditional surrender**

- 1 The requested Party may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that Party or, if he has already been convicted, in order that he may serve his sentence in the territory of that Party for an offence other than that for which extradition is requested.
- 2 The requested Party may, instead of postponing surrender, temporarily surrender the person claimed to the requesting Party in accordance with conditions to be determined by mutual agreement between the Parties.

#### **Article 20 – Handing over of property**

- 1 The requested Party shall, in so far as its law permits and at the request of the requesting Party, seize and hand over property:
  - a which may be required as evidence, or
  - b which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.
- 2 The property mentioned in paragraph 1 of this article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.
- 3 When the said property is liable to seizure or confiscation in the territory of the requested Party, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.
- 4 Any rights which the requested Party or third parties may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the requested Party as soon as possible after the trial.

#### **Article 21 – Transit**

- 1 Transit through the territory of one of the Contracting Parties shall be granted on submission of a request by the means mentioned in Article 12, paragraph 1, provided that the offence concerned is not considered by the Party requested to grant transit as an offence of a political or purely military character having regard to Articles 3 and 4 of this Convention.
- 2 Transit of a national, within the meaning of Article 6, of a country requested to grant transit may be refused.
- 3 Subject to the provisions of paragraph 4 of this article, it shall be necessary to produce the documents mentioned in Article 12, paragraph 2.

- 4 If air transport is used, the following provisions shall apply:
  - a when it is not intended to land, the requesting Party shall notify the Party over whose territory the flight is to be made and shall certify that one of the documents mentioned in Article 12, paragraph 2.a exists. In the case of an unscheduled landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 16, and the requesting Party shall submit a formal request for transit;
  - b when it is intended to land, the requesting Party shall submit a formal request for transit.
- 5 A Party may, however, at the time of signature or of the deposit of its instrument of ratification of, or accession to, this Convention, declare that it will only grant transit of a person on some or all of the conditions on which it grants extradition. In that event, reciprocity may be applied.
- 6 The transit of the extradited person shall not be carried out through any territory where there is reason to believe that his life or his freedom may be threatened by reason of his race, religion, nationality or political opinion.

#### **Article 22 – Procedure**

Except where this Convention otherwise provides, the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the requested Party.

#### **Article 23 – Language to be used**

The documents to be produced shall be in the language of the requesting or requested Party. The requested Party may require a translation into one of the official languages of the Council of Europe to be chosen by it.

#### **Article 24 – Expenses**

- 1 Expenses incurred in the territory of the requested Party by reason of extradition shall be borne by that Party.
- 2 Expenses incurred by reason of transit through the territory of a Party requested to grant transit shall be borne by the requesting Party.
- 3 In the event of extradition from a non metropolitan territory of the requested Party, the expenses occasioned by travel between that territory and the metropolitan territory of the requesting Party shall be borne by the latter. The same rule shall apply to expenses occasioned by travel between the non metropolitan territory of the requested Party and its metropolitan territory.

#### **Article 25 – Definition of “detention order”**

For the purposes of this Convention, the expression “detention order” means any order involving deprivation of liberty which has been made by a criminal court in addition to or instead of a prison sentence.

#### **Article 26 – Reservations**

- 1 Any Contracting Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.
- 2 Any Contracting Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary General of the Council of Europe.
- 3 A Contracting Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save in so far as it has itself accepted the provision.

#### **Article 27 – Territorial application**

- 1 This Convention shall apply to the metropolitan territories of the Contracting Parties.
- 2 In respect of France, it shall also apply to Algeria and to the overseas Departments and, in respect of the United Kingdom of Great Britain and Northern Ireland, to the Channel Islands and to the Isle of Man.
- 3 The Federal Republic of Germany may extend the application of this Convention to the Land of Berlin by notice addressed to the Secretary General of the Council of Europe, who shall notify the other Parties of such declaration.
- 4 By direct arrangement between two or more Contracting Parties, the application of this Convention may be extended, subject to the conditions laid down in the arrangement, to any territory of such Parties, other than the territories mentioned in paragraphs 1, 2 and 3 of this article, for whose international relations any such Party is responsible.

#### **Article 28 – Relations between this Convention and bilateral agreements**

- 1 This Convention shall, in respect of those countries to which it applies, supersede the provisions of any bilateral treaties, conventions or agreements governing extradition between any two Contracting Parties.
- 2 The Contracting Parties may conclude between themselves bilateral or multilateral agreements only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.
- 3 Where, as between two or more Contracting Parties, extradition takes place on the basis of a uniform law, the Parties shall be free to regulate their mutual relations in respect of extradition exclusively in accordance with such a system notwithstanding the provisions of this Convention. The same principle shall apply as between two or more Contracting Parties each of which has in force a law providing for the execution in its territory of warrants of arrest issued in the territory of the other Party or

Parties. Contracting Parties which exclude or may in the future exclude the application of this Convention as between themselves in accordance with this paragraph shall notify the Secretary General of the Council of Europe accordingly. The Secretary General shall inform the other Contracting Parties of any notification received in accordance with this paragraph.

#### **Article 29 – Signature, ratification and entry into force**

- 1 This Convention shall be open to signature by the members of the Council of Europe. It shall be ratified. The instruments of ratification shall be deposited with the Secretary General of the Council.
- 2 The Convention shall come into force 90 days after the date of deposit of the third instrument of ratification.
- 3 As regards any signatory ratifying subsequently the Convention shall come into force 90 days after the date of the deposit of its instrument of ratification.

#### **Article 30 – Accession**

- 1 The Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, provided that the resolution containing such invitation receives the unanimous agreement of the members of the Council who have ratified the Convention.
- 2 Accession shall be by deposit with the Secretary General of the Council of an instrument of accession, which shall take effect 90 days after the date of its deposit.

#### **Article 31 – Denunciation**

Any Contracting Party may denounce this Convention in so far as it is concerned by giving notice to the Secretary General of the Council of Europe. Denunciation shall take effect six months after the date when the Secretary General of the Council received such notification.

#### **Article 32 – Notifications**

The Secretary General of the Council of Europe shall notify the members of the Council and the government of any State which has acceded to this Convention of:

- a the deposit of any instrument of ratification or accession;
- b the date of entry into force of this Convention;
- c any declaration made in accordance with the provisions of Article 6, paragraph 1, and of Article 21, paragraph 5;
- d any reservation made in accordance with Article 26, paragraph 1;

- e the withdrawal of any reservation in accordance with Article 26, paragraph 2;
- f any notification of denunciation received in accordance with the provisions of Article 31 and by the date on which such denunciation will take effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Paris, this 13th day of December 1957, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to the signatory governments.



## **Additional Protocol to the European Convention on Extradition**

Strasbourg, 15.X.1975, ETS No. 86

The member States of the Council of Europe, signatory to this Protocol,  
Having regard to the provisions of the European Convention on Extradition  
opened for signature in Paris on 13 December 1957 (hereinafter referred to  
as "the Convention") and in particular Articles 3 and 9 thereof;

Considering that it is desirable to supplement these Articles with a view  
to strengthening the protection of humanity and of individuals,

Have agreed as follows:

### **Chapter I**

#### **Article 1**

For the application of Article 3 of the Convention, political offences shall  
not be considered to include the following:

- a the crimes against humanity specified in the Convention on the  
Prevention and Punishment of the Crime of Genocide adopted on  
9 December 1948 by the General Assembly of the United Nations;
- b the violations specified in Article 50 of the 1949 Geneva Convention  
for the Amelioration of the Condition of the Wounded and Sick in  
Armed Forces in the Field, Article 51 of the 1949 Geneva Convention  
for the Amelioration of the Condition of Wounded, Sick and  
Shipwrecked members of Armed Forces at Sea, Article 130 of the  
1949 Geneva Convention relative to the Treatment of Prisoners of  
War and Article 147 of the 1949 Geneva Convention relative to the  
Protection of Civilian Persons in Time of War;
- c any comparable violations of the laws of war having effect at the time  
when this Protocol enters into force and of customs of war existing at  
that time, which are not already provided for in the above mentioned  
provisions of the Geneva Conventions.

### **Chapter II**

#### **Article 2**

Article 9 of the Convention shall be supplemented by the following text,  
the original Article 9 of the Convention becoming paragraph 1 and the  
under-mentioned provisions becoming paragraphs 2, 3 and 4:

- “2. The extradition of a person against whom a final judgment has been rendered in a third State, Contracting Party to the Convention, for the offence or offences in respect of which the claim was made, shall not be granted:
- a if the aforementioned judgment resulted in his acquittal;
  - b if the term of imprisonment or other measure to which he was sentenced:
    - i has been completely enforced;
    - ii has been wholly, or with respect to the part not enforced, the subject of a pardon or an amnesty;
  - c if the court convicted the offender without imposing a sanction.
- 3 However, in the cases referred to in paragraph 2, extradition may be granted:
- a if the offence in respect of which judgment has been rendered was committed against a person, an institution or any thing having public status in the requesting State;
  - b if the person on whom judgment was passed had himself a public status in the requesting State;
  - c if the offence in respect of which judgment was passed was committed completely or partly in the territory of the requesting State or in a place treated as its territory.
- 4 The provisions of paragraphs 2 and 3 shall not prevent the application of wider domestic provisions relating to the effect of ne bis in idem attached to foreign criminal judgments.”

## **Chapter III**

### **Article 3**

- 1 This Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 2 The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.
- 3 In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of the deposit of its instrument of ratification, acceptance or approval.
- 4 A member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.



#### **Article 4**

- 1 Any State which has acceded to the Convention may accede to this Protocol after the Protocol has entered into force.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect 90 days after the date of its deposit.

#### **Article 5**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
- 2 Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 8 of this Protocol.

#### **Article 6**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it does not accept one or the other of Chapters I or II.
- 2 Any Contracting Party may withdraw a declaration it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
- 3 No reservation may be made to the provisions of this Protocol.

#### **Article 7**

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

#### **Article 8**

- 1 Any Contracting Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

- 2 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.
- 3 Denunciation of the Convention entails automatically denunciation of this Protocol.

#### **Article 9**

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

- a any signature;
- b any deposit of an instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Article 3 thereof;
- d any declaration received in pursuance of the provisions of Article 5 and any withdrawal of such a declaration;
- e any declaration made in pursuance of the provisions of Article 6, paragraph 1;
- f the withdrawal of any declaration carried out in pursuance of the provisions of Article 6, paragraph 2;
- g any notification received in pursuance of the provisions of Article 8 and the date on which denunciation takes effect.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 15th day of October 1975, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

## **Second Additional Protocol to the European Convention on Extradition**

Strasbourg, 17.III.1978, ETS No. 98

The member States of the Council of Europe, signatory to this Protocol,  
Desirous of facilitating the application of the European Convention on  
Extradition opened for signature in Paris on 13 December 1977 (here-  
inafter referred to as "the Convention") in the field of fiscal offences;

Considering it also desirable to supplement the Convention in certain  
other respects,

Have agreed as follows:

### **Chapter I**

#### **Article 1**

Paragraph 2 of Article 2 of the Convention shall be supplemented by the  
following provision:

"This right shall also apply to offences which are subject only to pecu-  
niary sanctions."

### **Chapter II**

#### **Article 2**

Article 5 of the Convention shall be replaced by the following provisions:

"Fiscal offences

- 1 For offences in connection with taxes, duties, customs and exchange  
extradition shall take place between the Contracting Parties in accor-  
dance with the provisions of the Convention if the offence, under the law  
of the requested Party, corresponds to an offence of the same nature.
- 2 Extradition may not be refused on the ground that the law of the  
requested Party does not impose the same kind of tax or duty or does not  
contain a tax, duty, custom or exchange regulation of the same kind as  
the law of the requesting Party."

### **Chapter III**

#### **Article 3**

The Convention shall be supplemented by the following provisions:

#### “Judgments in *absentia*”

- 1 When a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him *in absentia*, the requested Party may refuse to extradite for this purpose if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defence recognised as due to everyone charged with criminal offence. However, extradition shall be granted if the requesting Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence. This decision will authorise the requesting Party either to enforce the judgment in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited.
- 2 When the requested Party informs the person whose extradition has been requested of the judgment rendered against him *in absentia*, the requesting Party shall not regard this communication as a formal notification for the purposes of the criminal procedure in that State”.

### Chapter IV

#### Article 4

The Convention shall be supplemented by the following provisions:

#### “Amnesty

Extradition shall not be granted for an offence in respect of which an amnesty has been declared in the requested State and which that State had competence to prosecute under its own criminal law.”

### Chapter V

#### Article 5

Paragraph 1 of Article 12 of the Convention shall be replaced by the following provisions:

“The request shall be in writing and shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party; however, use of the diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more Parties.”

### Chapter VI

#### Article 6

- 1 This Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject

to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

- 2 The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.
- 3 In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of the deposit of its instrument of ratification, acceptance or approval.
- 4 A member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.

#### **Article 7**

- 1 Any State which has acceded to the Convention may accede to this Protocol after the Protocol has entered into force.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect 90 days after the date of its deposit.

#### **Article 8**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
- 2 Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect six months after the date of receipt by the Secretary General of the Council of Europe of the notification.

#### **Article 9**

- 1 Reservations made by a State to a provision of the Convention shall be applicable also to this Protocol, unless that State otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

- 2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right:
  - a not to accept Chapter I;
  - b not to accept Chapter II, or to accept it only in respect of certain offences or certain categories of the offences referred to in Article 2;
  - c not to accept Chapter III, or to accept only paragraph 1 of Article 3;
  - d not to accept Chapter IV;
  - e not to accept Chapter V.
- 3 Any Contracting Party may withdraw a reservation it has made in accordance with the foregoing paragraph by means of declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
- 4 A Contracting Party which has applied to this Protocol a reservation made in respect of a provision of the Convention or which has made a reservation in respect of a provision of this Protocol may not claim the application of that provision by another Contracting Party; it may, however, if its reservation is partial or conditional claim, the application of that provision in so far as it has itself accepted it.
- 5 No other reservation may be made to the provisions of this Protocol.

#### **Article 10**

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

#### **Article 11**

- 1 Any Contracting Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.
- 3 Denunciation of the Convention entails automatically denunciation of this Protocol.

#### **Article 12**

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

- a any signature of this Protocol;

- b any deposit of an instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles 6 and 7;
- d any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 8;
- e any declaration received in pursuance of the provisions of paragraph 1 of Article 9;
- f any reservation made in pursuance of the provisions of paragraph 2 of Article 9;
- g the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 9;
- h any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 17th day of March 1978, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.





**European Convention  
on Mutual Assistance  
in Criminal Matters**



# **European Convention on Mutual Assistance in Criminal Matters**

Strasbourg, 20.IV.1959, ETS No. 30

## **Preamble**

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity among its members;

Believing that the adoption of common rules in the field of mutual assistance in criminal matters will contribute to the attainment of this aim;

Considering that such mutual assistance is related to the question of extradition, which has already formed the subject of a Convention signed on 13th December 1957,

Have agreed as follows:

## **Chapter I – General provisions**

### **Article 1**

- 1 The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.
- 2 This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.

### **Article 2**

Assistance may be refused:

- a if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;
- b if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of its country.

## **Chapter II – Letter rogatory**

### **Article 3**

- 1 The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.
- 2 If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request, and the requested Party shall comply with the request if the law of its country does not prohibit it.
- 3 The requested Party may transmit certified copies or certified photostat copies of records or documents requested, unless the requesting Party expressly requests the transmission of originals, in which case the requested Party shall make every effort to comply with the request.

### **Article 4**

On the express request of the requesting Party the requested Party shall state the date and place of execution of the letters rogatory. Officials and interested persons may be present if the requested Party consents.

### **Article 5**

- 1 Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, reserve the right to make the execution of letters rogatory for search or seizure of property dependent on one or more of the following conditions:
  - a that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party;
  - b that the offence motivating the letters rogatory is an extraditable offence in the requested country;
  - c that execution of the letters rogatory is consistent with the law of the requested Party.
- 2 Where a Contracting Party makes a declaration in accordance with paragraph 1 of this article, any other Party may apply reciprocity.

### **Article 6**

- 1 The requested Party may delay the handing over of any property, records or documents requested, if it requires the said property, records or documents in connection with pending criminal proceedings.
- 2 Any property, as well as original records or documents, handed over in execution of letters rogatory shall be returned by the requesting Party to

the requested Party as soon as possible unless the latter Party waives the return thereof.

### **Chapter III – Service of writs and records of judicial verdicts – Appearance of witnesses, experts and prosecuted persons**

#### **Article 7**

- 1 The requested Party shall effect service of writs and records of judicial verdicts which are transmitted to it for this purpose by the requesting Party.

Service may be effected by simple transmission of the writ or record to the person to be served. If the requesting Party expressly so requests, service shall be effected by the requested Party in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.

- 2 Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested Party that service has been effected and stating the form and date of such service. One or other of these documents shall be sent immediately to the requesting Party. The requested Party shall, if the requesting Party so requests, state whether service has been effected in accordance with the law of the requested Party. If service cannot be effected, the reasons shall be communicated immediately by the requested Party to the requesting Party.
- 3 Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, request that service of a summons on an accused person who is in its territory be transmitted to its authorities by a certain time before the date set for appearance. This time shall be specified in the aforesaid declaration and shall not exceed 50 days.

This time shall be taken into account when the date of appearance is being fixed and when the summons is being transmitted.

#### **Article 8**

A witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting Party and is there again duly summoned.

#### **Article 9**

The allowances, including subsistence, to be paid and the travelling expenses to be refunded to a witness or expert by the requesting Party shall be calculated as from his place of residence and shall be at rates at

least equal to those provided for in the scales and rules in force in the country where the hearing is intended to take place.

#### **Article 10**

- 1 If the requesting Party considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the summons and the requested Party shall invite the witness or expert to appear.

The requested Party shall inform the requesting Party of the reply of the witness or expert.

- 2 In the case provided for under paragraph 1 of this article the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable.
- 3 If a specific request is made, the requested Party may grant the witness or expert an advance. The amount of the advance shall be endorsed on the summons and shall be refunded by the requesting Party.

#### **Article 11**

- 1 A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting Party shall be temporarily transferred to the territory where the hearing is intended to take place, provided that he shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 in so far as these are applicable.

Transfer may be refused:

- a if the person in custody does not consent,
  - b if his presence is necessary at criminal proceedings pending in the territory of the requested Party,
  - c if transfer is liable to prolong his detention, or
  - d if there are other overriding grounds for not transferring him to the territory of the requesting Party.
- 2 Subject to the provisions of Article 2, in a case coming within the immediately preceding paragraph, transit of the person in custody through the territory of a third State, Party to this Convention, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested.

A Contracting Party may refuse to grant transit to its own nationals.

- 3 The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party

through which transit is requested, unless the Party from whom transfer is requested applies for his release.

#### **Article 12**

- 1 A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting Party shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.
- 2 A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.
- 3 The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

### **Chapter IV – Judicial records**

#### **Article 13**

- 1 A requested Party shall communicate extracts from and information relating to judicial records, requested from it by the judicial authorities of a Contracting Party and needed in a criminal matter, to the same extent that these may be made available to its own judicial authorities in like case.
- 2 In any case other than that provided for in paragraph 1 of this article the request shall be complied with in accordance with the conditions provided for by the law, regulations or practice of the requested Party.

### **Chapter V – Procedure**

#### **Article 14**

- 1 Requests for mutual assistance shall indicate as follows:
  - a the authority making the request,
  - b the object of and the reason for the request,
  - c where possible, the identity and the nationality of the person concerned, and
  - d where necessary, the name and address of the person to be served.

- 2 Letters rogatory referred to in Articles 3, 4 and 5 shall, in addition, state the offence and contain a summary of the facts.

#### **Article 15**

- 1 Letters rogatory referred to in Articles 3, 4 and 5 as well as the applications referred to in Article 11 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.
- 2 In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. They shall be returned together with the relevant documents through the channels stipulated in paragraph 1 of this article.
- 3 Requests provided for in paragraph 1 of Article 13 may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.
- 4 Requests for mutual assistance, other than those provided for in paragraphs 1 and 3 of this article and, in particular, requests for investigation preliminary to prosecution, may be communicated directly between the judicial authorities.
- 5 In cases where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).
- 6 A Contracting Party may, when signing this Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, give notice that some or all requests for assistance shall be sent to it through channels other than those provided for in this article, or require that, in a case provided for in paragraph 2 of this article, a copy of the letters rogatory shall be transmitted at the same time to its Ministry of Justice.
- 7 The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Contracting Parties which provide for the direct transmission of requests for assistance between their respective authorities.

#### **Article 16**

- 1 Subject to paragraph 2 of this article, translations of requests and annexed documents shall not be required.
- 2 Each Contracting Party may, when signing or depositing its instrument of ratification or accession, by means of a declaration addressed to the



Secretary General of the Council of Europe, reserve the right to stipulate that requests and annexed documents shall be addressed to it accompanied by a translation into its own language or into either of the official languages of the Council of Europe or into one of the latter languages, specified by it. The other Contracting Parties may apply reciprocity.

- 3 This article is without prejudice to the provisions concerning the translation of requests or annexed documents contained in the agreements or arrangements in force or to be made between two or more Contracting Parties.

#### **Article 17**

Evidence or documents transmitted pursuant to this Convention shall not require any form of authentication.

#### **Article 18**

Where the authority which receives a request for mutual assistance has no jurisdiction to comply therewith, it shall, *ex officio*, transmit the request to the competent authority of its country and shall so inform the requesting Party through the direct channels, if the request has been addressed through such channels.

#### **Article 19**

Reasons shall be given for any refusal of mutual assistance.

#### **Article 20**

Subject to the provisions of Article 10, paragraph 3, execution of requests for mutual assistance shall not entail refunding of expenses except those incurred by the attendance of experts in the territory of the requested Party or the transfer of a person in custody carried out under Article 11.

### **Chapter VI – Laying of information in connection with proceedings**

#### **Article 21**

- 1 Information laid by one Contracting Party with a view to proceedings in the courts of another Party shall be transmitted between the Ministries of Justice concerned unless a Contracting Party avails itself of the option provided for in paragraph 6 of Article 15.
- 2 The requested Party shall notify the requesting Party of any action taken on such information and shall forward a copy of the record of any verdict pronounced.
- 3 The provisions of Article 16 shall apply to information laid under paragraph 1 of this article.

## **Chapter VII – Exchange of information from judicial records**

### **Article 22**

Each Contracting Party shall inform any other Party of all criminal convictions and subsequent measures in respect of nationals of the latter Party, entered in the judicial records. Ministries of Justice shall communicate such information to one another at least once a year. Where the person concerned is considered a national of two or more other Contracting Parties, the information shall be given to each of these Parties, unless the person is a national of the Party in the territory of which he was convicted.

## **Chapter VIII – Final provisions**

### **Article 23**

- 1 Any Contracting Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.
- 2 Any Contracting Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary General of the Council of Europe.
- 3 A Contracting Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save in so far as it has itself accepted the provision.

### **Article 24**

A Contracting Party may, when signing the Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities.

### **Article 25**

- 1 This Convention shall apply to the metropolitan territories of the Contracting Parties.
- 2 In respect of France, it shall also apply to Algeria and to the overseas Departments, and, in respect of Italy, it shall also apply to the territory of Somaliland under Italian administration.
- 3 The Federal Republic of Germany may extend the application of this Convention to the Land of Berlin by notice addressed to the Secretary General of the Council of Europe.
- 4 In respect of the Kingdom of the Netherlands, the Convention shall apply to its European territory. The Netherlands may extend the application of this Convention to the Netherlands Antilles, Surinam and Netherlands

New Guinea by notice addressed to the Secretary General of the Council of Europe.

- 5 By direct arrangement between two or more Contracting Parties and subject to the conditions laid down in the arrangement, the application of this Convention may be extended to any territory, other than the territories mentioned in paragraphs 1, 2, 3 and 4 of this article, of one of these Parties, for the international relations of which any such Party is responsible.

#### **Article 26**

- 1 Subject to the provisions of Article 15, paragraph 7, and Article 16, paragraph 3, this Convention shall, in respect of those countries to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two Contracting Parties.
- 2 This Convention shall not affect obligations incurred under the terms of any other bilateral or multilateral international convention which contains or may contain clauses governing specific aspects of mutual assistance in a given field.
- 3 The Contracting Parties may conclude between themselves bilateral or multilateral agreements on mutual assistance in criminal matters only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein
- 4 Where, as between two or more Contracting Parties, mutual assistance in criminal matters is practised on the basis of uniform legislation or of a special system providing for the reciprocal application in their respective territories of measures of mutual assistance, these Parties shall, notwithstanding the provisions of this Convention, be free to regulate their mutual relations in this field exclusively in accordance with such legislation or system. Contracting Parties which, in accordance with this paragraph, exclude as between themselves the application of this Convention shall notify the Secretary General of the Council of Europe accordingly.

#### **Article 27**

- 1 This Convention shall be open to signature by the members of the Council of Europe. It shall be ratified. The instruments of ratification shall be deposited with the Secretary General of the Council.
- 2 The Convention shall come into force 90 days after the date of deposit of the third instrument of ratification.
- 3 As regards any signatory ratifying subsequently the Convention shall come into force 90 days after the date of the deposit of its instrument of ratification.

### **Article 28**

- 1 The Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, provided that the resolution containing such invitation obtains the unanimous agreement of the members of the Council who have ratified the Convention.
- 2 Accession shall be by deposit with the Secretary General of the Council of an instrument of accession which shall take effect 90 days after the date of its deposit.

### **Article 29**

Any Contracting Party may denounce this Convention in so far as it is concerned by giving notice to the Secretary General of the Council of Europe. Denunciation shall take effect six months after the date when the Secretary General of the Council received such notification.

### **Article 30**

The Secretary General of the Council of Europe shall notify the members of the Council and the government of any State which has acceded to this Convention of:

- a the names of the signatories and the deposit of any instrument of ratification or accession;
- b the date of entry into force of this Convention;
- c any notification received in accordance with the provisions of Article 5 – paragraph 1, Article 7 – paragraph 3, Article 15 – paragraph 6, Article 16 – paragraph 2, Article 24, Article 25 – paragraphs 3 and 4, Article 26 – paragraph 4;
- d any reservation made in accordance with Article 23, paragraph 1;
- e the withdrawal of any reservation in accordance with Article 23, paragraph 2;
- f any notification of denunciation received in accordance with the provisions of Article 29 and the date on which such denunciation will take effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 20th day of April 1959, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to the signatory and acceding governments.

## **Additional protocol to the European Convention on Mutual Assistance in Criminal Matters**

Strasbourg, 17.III.1978, ETS No. 99

The member States of the Council of Europe, signatory to this Protocol, Desirous of facilitating the application of the European Convention on Mutual Assistance in Criminal Matters opened for signature in Strasbourg on 20th April 1959 (hereinafter referred to as "the Convention") in the field of fiscal offences;

Considering it also desirable to supplement the Convention in certain other respects,

Have agreed as follows:

### **Chapter I**

#### **Article 1**

The Contracting Parties shall not exercise the right provided for in Article 2.a of the Convention to refuse assistance solely on the ground that the request concerns an offence which the requested Party considers a fiscal offence.

#### **Article 2**

- 1 In the case where a Contracting Party has made the execution of letters rogatory for search or seizure of property dependent on the condition that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party, this condition shall be fulfilled, as regards fiscal offences, if the offence is punishable under the law of the requesting Party and corresponds to an offence of the same nature under the law of the requested Party.
- 2 The request may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the requesting Party.

### **Chapter II**

#### **Article 3**

The Convention shall also apply to:

- a the service of documents concerning the enforcement of a sentence, the recovery of a fine or the payment of costs of proceedings;
- b measures relating to the suspension of pronouncement of a sentence or of its enforcement, to conditional release, to deferment of the commencement of the enforcement of a sentence or to the interruption of such enforcement.

### **Chapter III**

#### **Article 4**

Article 22 of the Convention shall be supplemented by the following text, the original Article 22 of the Convention becoming paragraph 1 and the below mentioned provisions becoming paragraph 2:

“2 Furthermore, any Contracting Party which has supplied the above mentioned information shall communicate to the Party concerned, on the latter's request in individual cases, a copy of the convictions and measures in question as well as any other information relevant thereto in order to enable it to consider whether they necessitate any measures at national level. This communication shall take place between the Ministries of Justice concerned.”

### **Chapter IV**

#### **Article 5**

- 1 This Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 2 The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.
- 3 In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of the deposit of its instrument of ratification, acceptance or approval.
- 4 A member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.

#### **Article 6**

- 1 Any State which has acceded to the Convention may accede to this Protocol after the Protocol has entered into force.

- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect 90 days after the date of its deposit.

#### **Article 7**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
- 2 Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect six months after the date of receipt by the Secretary General of the Council of Europe of the notification.

#### **Article 8**

- 1 Reservations made by a Contracting Party to a provision of the Convention shall be applicable also to this Protocol, unless that Party otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. The same shall apply to the declarations made by virtue of Article 24 of the Convention.
- 2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right:
  - a not to accept Chapter I, or to accept it only in respect of certain offences or certain categories of the offences referred to in Article I, or not to comply with letters rogatory for search or seizure of property in respect of fiscal offences;
  - b not to accept Chapter II;
  - c not to accept Chapter III.
- 3 Any Contracting Party may withdraw a declaration it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
- 4 A Contracting Party which has applied to this Protocol a reservation made in respect of a provision of the Convention or which has made a

reservation in respect of a provision of this Protocol may not claim the application of that provision by another Contracting Party; it may, however, if its reservation is partial or conditional claim the application of that provision in so far as it has itself accepted it.

- 5 No other reservation may be made to the provisions of this Protocol.

#### **Article 9**

The provisions of this Protocol are without prejudice to more extensive regulations in bilateral or multilateral agreements concluded between Contracting Parties in application of Article 26, paragraph 3, of the Convention.

#### **Article 10**

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

#### **Article 11**

- 1 Any Contracting Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.
- 3 Denunciation of the Convention entails automatically denunciation of this Protocol.

#### **Article 12**

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

- a any signature of this Protocol;
- b any deposit of an instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles 5 and 6;
- d any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 7;
- e any declaration received in pursuance of the provisions of paragraph 1 of Article 8;



- f any reservation made in pursuance of the provisions of paragraph 2 of Article 8;
- g the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 8;
- h any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 17th day of March 1978, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.



## **Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters**

Strasbourg, 8.XI.2001, ETS No. 182

The member States of the Council of Europe, signatory to this Protocol,  
Having regard to their undertakings under the Statute of the Council of Europe;

Desirous of further contributing to safeguard human rights, uphold the rule of law and support the democratic fabric of society;

Considering it desirable to that effect to strengthen their individual and collective ability to respond to crime;

Decided to improve on and supplement in certain aspects the European Convention on Mutual Assistance in Criminal Matters done at Strasbourg on 20 April 1959 (hereinafter referred to as "the Convention"), as well as the Additional Protocol thereto, done at Strasbourg on 17 March 1978;

Taking into consideration the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950, as well as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981,

Have agreed as follows:

### **Chapter I**

#### **Article 1 – Scope**

Article 1 of the Convention shall be replaced by the following provisions:

- “1 The Parties undertake promptly to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.
- 2 This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.
- 3 Mutual assistance may also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under

the national law of the requesting or the requested Party by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

- 4 Mutual assistance shall not be refused solely on the grounds that it relates to acts for which a legal person may be held liable in the requesting Party."

#### **Article 2 – Presence of officials of the requesting Party**

Article 4 of the Convention shall be supplemented by the following text, the original Article 4 of the Convention becoming paragraph 1 and the provisions below becoming paragraph 2:

- "2 Requests for the presence of such officials or interested persons should not be refused where that presence is likely to render the execution of the request for assistance more responsive to the needs of the requesting Party and, therefore, likely to avoid the need for supplementary requests for assistance."

#### **Article 3 – Temporary transfer of detained persons to the territory of the requesting Party**

Article 11 of the Convention shall be replaced by the following provisions:

- "1 A person in custody whose personal appearance for evidentiary purposes other than for standing trial is applied for by the requesting Party shall be temporarily transferred to its territory, provided that he or she shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 of this Convention, in so far as these are applicable.

Transfer may be refused if:

- a the person in custody does not consent;
  - b his or her presence is necessary at criminal proceedings pending in the territory of the requested Party;
  - c transfer is liable to prolong his or her detention, or
  - d there are other overriding grounds for not transferring him or her to the territory of the requesting Party.
- 2 Subject to the provisions of Article 2 of this Convention, in a case coming within paragraph 1, transit of the person in custody through the territory of a third Party, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested. A Party may refuse to grant transit to its own nationals.
  - 3 The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party

through which transit is requested, unless the Party from whom transfer is requested applies for his or her release.”

#### **Article 4 – Channels of communication**

Article 15 of the Convention shall be replaced by the following provisions:

- “1 Requests for mutual assistance, as well as spontaneous information, shall be addressed in writing by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels. However, they may be forwarded directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party and returned through the same channels.
- 2 Applications as referred to in Article 11 of this Convention and Article 13 of the Second Additional Protocol to this Convention shall in all cases be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.
- 3 Requests for mutual assistance concerning proceedings as mentioned in paragraph 3 of Article 1 of this Convention may also be forwarded directly by the administrative or judicial authorities of the requesting Party to the administrative or judicial authorities of the requested Party, as the case may be, and returned through the same channels.
- 4 Requests for mutual assistance made under Articles 18 and 19 of the Second Additional Protocol to this Convention may also be forwarded directly by the competent authorities of the requesting Party to the competent authorities of the requested Party.
- 5 Requests provided for in paragraph 1 of Article 13 of this Convention may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 of this Convention shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.
- 6 Requests for copies of convictions and measures as referred to in Article 4 of the Additional Protocol to the Convention may be made directly to the competent authorities. Any Contracting State may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of this paragraph, deem competent authorities.
- 7 In urgent cases, where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).
- 8 Any Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, reserve the right to make the execution

of requests, or specified requests, for mutual assistance dependent on one or more of the following conditions:

- a that a copy of the request be forwarded to the central authority designated in that declaration;
  - b that requests, except urgent requests, be forwarded to the central authority designated in that declaration;
  - c that, in case of direct transmission for reasons of urgency, a copy shall be transmitted at the same time to its Ministry of Justice;
  - d that some or all requests for assistance shall be sent to it through channels other than those provided for in this article.
- 9 Requests for mutual assistance and any other communications under this Convention or its Protocols may be forwarded through any electronic or other means of telecommunication provided that the requesting Party is prepared, upon request, to produce at any time a written record of it and the original. However, any Contracting State, may by a declaration addressed at any time to the Secretary General of the Council of Europe, establish the conditions under which it shall be willing to accept and execute requests received by electronic or other means of telecommunication.
- 10 The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Parties which provide for the direct transmission of requests for assistance between their respective authorities."

#### **Article 5 – Costs**

Article 20 of the Convention shall be replaced by the following provisions:

- "1 Parties shall not claim from each other the refund of any costs resulting from the application of this Convention or its Protocols, except:
- a costs incurred by the attendance of experts in the territory of the requested Party;
  - b costs incurred by the transfer of a person in custody carried out under Articles 13 or 14 of the Second Additional Protocol to this Convention, or Article 11 of this Convention;
  - c costs of a substantial or extraordinary nature.
- 2 However, the cost of establishing a video or telephone link, costs related to the servicing of a video or telephone link in the requested Party, the remuneration of interpreters provided by it and allowances to witnesses and their travelling expenses in the requested Party shall be refunded by the requesting Party to the requested Party, unless the Parties agree otherwise.
- 3 Parties shall consult with each other with a view to making arrangements for the payment of costs claimable under paragraph 1.c above.
- 4 The provisions of this article shall apply without prejudice to the provisions of Article 10, paragraph 3, of this Convention."

### **Article 6 – Judicial authorities**

Article 24 of the Convention shall be replaced by the following provisions:

“Any State shall at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities. It subsequently may, at any time and in the same manner, change the terms of its declaration.”

## **Chapter II**

### **Article 7 – Postponed execution of requests**

- 1 The requested Party may postpone action on a request if such action would prejudice investigations, prosecutions or related proceedings by its authorities.
- 2 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.
- 3 If the request is postponed, reasons shall be given for the postponement. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

### **Article 8 – Procedure**

Notwithstanding the provisions of Article 3 of the Convention, where requests specify formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to fundamental principles of its law, unless otherwise provided for in this Protocol.

### **Article 9 – Hearing by video conference**

- 1 If a person is in one Party's territory and has to be heard as a witness or expert by the judicial authorities of another Party, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in paragraphs 2 to 7.
- 2 The requested Party shall agree to the hearing by video conference provided that the use of the video conference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested Party has no access to the technical

means for video conferencing, such means may be made available to it by the requesting Party by mutual agreement.

- 3 Requests for a hearing by video conference shall contain, in addition to the information referred to in Article 14 of the Convention, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.
- 4 The judicial authority of the requested Party shall summon the person concerned to appear in accordance with the forms laid down by its law.
- 5 With reference to hearing by video conference, the following rules shall apply:
  - a a judicial authority of the requested Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Party. If the judicial authority of the requested Party is of the view that during the hearing the fundamental principles of the law of the requested Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;
  - b measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Parties;
  - c the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Party in accordance with its own laws;
  - d at the request of the requesting Party or the person to be heard, the requested Party shall ensure that the person to be heard is assisted by an interpreter, if necessary;
  - e the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Party.
- 6 Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Party shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Party to the competent authority of the requesting Party.
- 7 Each Party shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory, in accordance with this article, and refuse to testify when under an obligation to testify or do



not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.

- 8 Parties may at their discretion also apply the provisions of this article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving the accused person or the suspect. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Parties concerned, in accordance with their national law and relevant international instruments. Hearings involving the accused person or the suspect shall only be carried out with his or her consent.
- 9 Any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it will not avail itself of the possibility provided in paragraph 8 above of also applying the provisions of this article to hearings by video conference involving the accused person or the suspect.

#### **Article 10 – Hearing by telephone conference**

- 1 If a person is in one Party's territory and has to be heard as a witness or expert by judicial authorities of another Party, the latter may, where its national law so provides, request the assistance of the former Party to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 6.
- 2 A hearing may be conducted by telephone conference only if the witness or expert agrees that the hearing take place by that method.
- 3 The requested Party shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law.
- 4 A request for a hearing by telephone conference shall contain, in addition to the information referred to in Article 14 of the Convention, the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.
- 5 The practical arrangements regarding the hearing shall be agreed between the Parties concerned. When agreeing such arrangements, the requested Party shall undertake to:
  - a notify the witness or expert concerned of the time and the venue of the hearing;
  - b ensure the identification of the witness or expert;
  - c verify that the witness or expert agrees to the hearing by telephone conference.
- 6 The requested Party may make its agreement subject, fully or in part, to the relevant provisions of Article 9, paragraphs 5 and 7.

### **Article 11 – Spontaneous information**

- 1 Without prejudice to their own investigations or proceedings, the competent authorities of a Party may, without prior request, forward to the competent authorities of another Party information obtained within the framework of their own investigations, when they consider that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings, or might lead to a request by that Party under the Convention or its Protocols.
- 2 The providing Party may, pursuant to its national law, impose conditions on the use of such information by the receiving Party.
- 3 The receiving Party shall be bound by those conditions.
- 4 However, any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to be bound by the conditions imposed by the providing Party under paragraph 2 above, unless it receives prior notice of the nature of the information to be provided and agrees to its transmission.

### **Article 12 – Restitution**

- 1 At the request of the requesting Party and without prejudice to the rights of bona fide third parties, the requested Party may place articles obtained by criminal means at the disposal of the requesting Party with a view to their return to their rightful owners.
- 2 In applying Articles 3 and 6 of the Convention, the requested Party may waive the return of articles either before or after handing them over to the requesting Party if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of bona fide third parties shall not be affected.
- 3 In the event of a waiver before handing over the articles to the requesting Party, the requested Party shall exercise no security right or other right of recourse under tax or customs legislation in respect of these articles.
- 4 A waiver as referred to in paragraph 2 shall be without prejudice to the right of the requested Party to collect taxes or duties from the rightful owner.

### **Article 13 – Temporary transfer of detained persons to the requested Party**

- 1 Where there is agreement between the competent authorities of the Parties concerned, a Party which has requested an investigation for which the presence of a person held in custody on its own territory is required may temporarily transfer that person to the territory of the Party in which the investigation is to take place.

- 2 The agreement shall cover the arrangements for the temporary transfer of the person and the date by which the person must be returned to the territory of the requesting Party
- 3 Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Party.
- 4 The transferred person shall remain in custody in the territory of the requested Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from which the person was transferred applies for his or her release.
- 5 The period of custody in the territory of the requested Party shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Party.
- 6 The provisions of Article 11, paragraph 2, and Article 12 of the Convention shall apply *mutatis mutandis*.
- 7 Any Contracting State may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that before an agreement is reached under paragraph 1 of this article, the consent referred to in paragraph 3 of this article will be required, or will be required under certain conditions indicated in the declaration.

#### **Article 14 – Personal appearance of transferred sentenced persons**

The provisions of Articles 11 and 12 of the Convention shall apply *mutatis mutandis* also to persons who are in custody in the requested Party, pursuant to having been transferred in order to serve a sentence passed in the requesting Party, where their personal appearance for purposes of review of the judgement is applied for by the requesting Party.

#### **Article 15 – Language of procedural documents and judicial decisions to be served**

- 1 The provisions of this article shall apply to any request for service under Article 7 of the Convention or Article 3 of the Additional Protocol thereto.
- 2 Procedural documents and judicial decisions shall in all cases be transmitted in the language, or the languages, in which they were issued.
- 3 Notwithstanding the provisions of Article 16 of the Convention, if the authority that issued the papers knows or has reasons to believe that the addressee understands only some other language, the papers, or at least the most important passages thereof, shall be accompanied by a translation into that other language.
- 4 Notwithstanding the provisions of Article 16 of the Convention, procedural documents and judicial decisions shall, for the benefit of the authorities of

the requested Party, be accompanied by a short summary of their contents translated into the language, or one of the languages, of that Party.

#### **Article 16 – Service by post**

- 1 The competent judicial authorities of any Party may directly address, by post, procedural documents and judicial decisions, to persons who are in the territory of any other Party.
- 2 Procedural documents and judicial decisions shall be accompanied by a report stating that the addressee may obtain information from the authority identified in the report, regarding his or her rights and obligations concerning the service of the papers. The provisions of paragraph 3 of Article 15 above shall apply to that report.
- 3 The provisions of Articles 8, 9 and 12 of the Convention shall apply *mutatis mutandis* to service by post.
- 4 The provisions of paragraphs 1, 2 and 3 of Article 15 above shall also apply to service by post.

#### **Article 17 – Cross-border observations**

- 1 Police officers of one of the Parties who, within the framework of a criminal investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the above-mentioned person, shall be authorised to continue their observation in the territory of another Party where the latter has authorised cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorisation.

On request, the observation will be entrusted to officers of the Party in whose territory it is carried out.

The request for assistance referred to in the first sub-paragraph must be sent to an authority designated by each Party and having jurisdiction to grant or to forward the requested authorisation.

- 2 Where, for particularly urgent reasons, prior authorisation of the other Party cannot be requested, the officers conducting the observation within the framework of a criminal investigation shall be authorised to continue beyond the border the observation of a person presumed to have committed offences listed in paragraph 6, provided that the following conditions are met:
  - a the authorities of the Party designated under paragraph 4, in whose territory the observation is to be continued, must be notified immediately, during the observation, that the border has been crossed;

- b a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted without delay.

Observation shall cease as soon as the Party in whose territory it is taking place so requests, following the notification referred to in a. or the request referred to in b. or where authorisation has not been obtained within five hours of the border being crossed.

- 3 The observation referred to in paragraphs 1 and 2 shall be carried out only under the following general conditions:
  - a The officers conducting the observation must comply with the provisions of this article and with the law of the Party in whose territory they are operating; they must obey the instructions of the local responsible authorities.
  - b Except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorisation has been granted.
  - c The officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity.
  - d The officers conducting the observation may carry their service weapons during the observation, save where specifically otherwise decided by the requested Party; their use shall be prohibited save in cases of legitimate self-defence.
  - e Entry into private homes and places not accessible to the public shall be prohibited.
  - f The officers conducting the observation may neither stop and question, nor arrest, the person under observation.
  - g All operations shall be the subject of a report to the authorities of the Party in whose territory they took place; the officers conducting the observation may be required to appear in person.
  - h The authorities of the Party from which the observing officers have come shall, when requested by the authorities of the Party in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.
- 4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate both the officers and authorities that they designate for the purposes of paragraphs 1 and 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.
- 5 The Parties may, at bilateral level, extend the scope of this article and adopt additional measures in implementation thereof.

- 6 The observation referred to in paragraph 2 may take place only for one of the following criminal offences:
- assassination;
  - murder;
  - rape;
  - arson;
  - counterfeiting;
  - armed robbery and receiving of stolen goods;
  - extortion;
  - kidnapping and hostage taking;
  - traffic in human beings;
  - illicit traffic in narcotic drugs and psychotropic substances;
  - breach of the laws on arms and explosives;
  - use of explosives;
  - illicit carriage of toxic and dangerous waste;
  - smuggling of aliens;
  - sexual abuse of children.

#### **Article 18 – Controlled delivery**

- 1 Each Party undertakes to ensure that, at the request of another Party, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.
- 2 The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Party, with due regard to the national law of that Party.
- 3 Controlled deliveries shall take place in accordance with the procedures of the requested Party. Competence to act, direct and control operations shall lie with the competent authorities of that Party.
- 4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

#### **Article 19 – Covert investigations**

- 1 The requesting and the requested Parties may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).

- 2 The decision on the request is taken in each individual case by the competent authorities of the requested Party with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Parties with due regard to their national law and procedures.
- 3 Covert investigations shall take place in accordance with the national law and procedures of the Party on the territory of which the covert investigation takes place. The Parties involved shall co-operate to ensure that the covert investigation is prepared and supervised and to make arrangements for the security of the officers acting under covert or false identity.
- 4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of paragraph 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

#### **Article 20 – Joint investigation teams**

- 1 By mutual agreement, the competent authorities of two or more Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Parties setting up the team. The composition of the team shall be set out in the agreement.

A joint investigation team may, in particular, be set up where:

- a a Party's investigations into criminal offences require difficult and demanding investigations having links with other Parties;
- b a number of Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Parties involved.

A request for the setting up of a joint investigation team may be made by any of the Parties concerned. The team shall be set up in one of the Parties in which the investigations are expected to be carried out.

- 2 In addition to the information referred to in the relevant provisions of Article 14 of the Convention, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.
- 3 A joint investigation team shall operate in the territory of the Parties setting up the team under the following general conditions:
  - a the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Party in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;

- b the team shall carry out its operations in accordance with the law of the Party in which it operates. The members and seconded members of the team shall carry out their tasks under the leadership of the person referred to in sub-paragraph a, taking into account the conditions set by their own authorities in the agreement on setting up the team;
  - c the Party in which the team operates shall make the necessary organisational arrangements for it to do so.
- 4 In this article, members of the joint investigation team from the Party in which the team operates are referred to as "members", while members from Parties other than the Party in which the team operates are referred to as "seconded members".
- 5 Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Party where the team operates, decide otherwise.
- 6 Seconded members of the joint investigation team may, in accordance with the law of the Party where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Party of operation and the seconding Party.
- 7 Where the joint investigation team needs investigative measures to be taken in one of the Parties setting up the team, members seconded to the team by that Party may request their own competent authorities to take those measures. Those measures shall be considered in that Party under the conditions which would apply if they were requested in a national investigation.
- 8 Where the joint investigation team needs assistance from a Party other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operation to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.
- 9 A seconded member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.
- 10 Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Parties concerned may be used for the following purposes:
  - a for the purposes for which the team has been set up;



- b subject to the prior consent of the Party where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Party concerned or in respect of which that Party could refuse mutual assistance;
  - c for preventing an immediate and serious threat to public security, and without prejudice to sub-paragraph b. if subsequently a criminal investigation is opened;
  - d for other purposes to the extent that this is agreed between Parties setting up the team.
- 11 This article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.
- 12 To the extent that the laws of the Parties concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Parties setting up the joint investigation team to take part in the activities of the team. The rights conferred upon the members or seconded members of the team by virtue of this article shall not apply to these persons unless the agreement expressly states otherwise.

#### **Article 21 – Criminal liability regarding officials**

During the operations referred to in Articles 17, 18, 19 or 20, unless otherwise agreed upon by the Parties concerned, officials from a Party other than the Party of operation shall be regarded as officials of the Party of operation with respect to offences committed against them or by them.

#### **Article 22 – Civil liability regarding officials**

- 1 Where, in accordance with Articles 17, 18, 19 or 20, officials of a Party are operating in another Party, the first Party shall be liable for any damage caused by them during their operations, in accordance with the law of the Party in whose territory they are operating.
- 2 The Party in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.
- 3 The Party whose officials have caused damage to any person in the territory of another Party shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.
- 4 Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Party shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Party.

- 5 The provisions of this article shall apply subject to the proviso that the Parties did not agree otherwise.

#### **Article 23 – Protection of witnesses**

Where a Party requests assistance under the Convention or one of its Protocols in respect of a witness at risk of intimidation or in need of protection, the competent authorities of the requesting and requested Parties shall endeavour to agree on measures for the protection of the person concerned, in accordance with their national law.

#### **Article 24 – Provisional measures**

- 1 At the request of the requesting Party, the requested Party, in accordance with its national law, may take provisional measures for the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests.
- 2 The requested Party may grant the request partially or subject to conditions, in particular time limitation.

#### **Article 25 – Confidentiality**

The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

#### **Article 26 – Data protection**

- 1 Personal data transferred from one Party to another as a result of the execution of a request made under the Convention or any of its Protocols, may be used by the Party to which such data have been transferred, only:
  - a for the purpose of proceedings to which the Convention or any of its Protocols apply;
  - b for other judicial and administrative proceedings directly related to the proceedings mentioned under (a);
  - c for preventing an immediate and serious threat to public security.
- 2 Such data may however be used for any other purpose if prior consent to that effect is given by either the Party from which the data had been transferred, or the data subject.
- 3 Any Party may refuse to transfer personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols where
  - such data is protected under its national legislation, and

- the Party to which the data should be transferred is not bound by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981, unless the latter Party undertakes to afford such protection to the data as is required by the former Party.
- 4 Any Party that transfers personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols may require the Party to which the data have been transferred to give information on the use made with such data.
  - 5 Any Party may, by a declaration addressed to the Secretary General of the Council of Europe, require that, within the framework of procedures for which it could have refused or limited the transmission or the use of personal data in accordance with the provisions of the Convention or one of its Protocols, personal data transmitted to another Party not be used by the latter for the purposes of paragraph 1 unless with its previous consent.

#### **Article 27 – Administrative authorities**

Parties may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities they will deem administrative authorities for the purposes of Article 1, paragraph 3, of the Convention.

#### **Article 28 – Relations with other treaties**

The provisions of this Protocol are without prejudice to more extensive regulations in bilateral or multilateral agreements concluded between Parties in application of Article 26, paragraph 3, of the Convention.

#### **Article 29 – Friendly settlement**

The European Committee on Crime Problems shall be kept informed regarding the interpretation and application of the Convention and its Protocols, and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of their application.

### **Chapter III**

#### **Article 30 – Signature and entry into force**

- 1 This Protocol shall be open for signature by the member States of the Council of Europe which are a Party to or have signed the Convention. It shall be subject to ratification, acceptance or approval. A signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously ratified, accepted or approved the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

- 2 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance or approval.
- 3 In respect of any signatory State which subsequently deposits its instrument of ratification, acceptance or approval, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit.

#### **Article 31 – Accession**

- 1 Any non-member State, which has acceded to the Convention, may accede to this Protocol after it has entered into force.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession.
- 3 In respect of any acceding State, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession.

#### **Article 32 – Territorial application**

- 1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
- 2 Any State may, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date or receipt of such notification by the Secretary General.

#### **Article 33 – Reservations**

- 1 Reservations made by a Party to any provision of the Convention or its Protocol shall be applicable also to this Protocol, unless that Party otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. The same shall apply to any declaration made in respect or by virtue of any provision of the Convention or its Protocol.
- 2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails

itself of the right not to accept wholly or in part any one or more of Articles 16, 17, 18, 19 and 20. No other reservation may be made.

- 3 Any State may wholly or partially withdraw a reservation it has made in accordance with the foregoing paragraphs, by means of a declaration addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.
- 4 Any Party which has made a reservation in respect of any of the articles of this Protocol mentioned in paragraph 2 above, may not claim the application of that article by another Party. It may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

#### **Article 34 – Denunciation**

- 1 Any Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.
- 3 Denunciation of the Convention entails automatically denunciation of this Protocol.

#### **Article 35 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Protocol of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles 30 and 31;
- d any other act, declaration, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 8th day of November 2001, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the non-member States which have acceded to the Convention.



**European Convention  
on the Transfer of  
Sentenced Persons**





## **Convention on the Transfer of Sentenced Persons**

Strasbourg, 21.III.1983, ETS No. 112

The member States of the Council of Europe and the other States, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Desirous of further developing international co-operation in the field of criminal law;

Considering that such co-operation should further the ends of justice and the social rehabilitation of sentenced persons;

Considering that these objectives require that foreigners who are deprived of their liberty as a result of their commission of a criminal offence should be given the opportunity to serve their sentences within their own society; and

Considering that this aim can best be achieved by having them transferred to their own countries,

Have agreed as follows:

### **Article 1 – Definitions**

For the purposes of this Convention:

- a "sentence" means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time on account of a criminal offence;
- b "judgment" means a decision or order of a court imposing a sentence;
- c "sentencing State" means the State in which the sentence was imposed on the person who may be, or has been, transferred;
- d "administering State" means the State to which the sentenced person may be, or has been, transferred in order to serve his sentence.

### **Article 2 – General principles**

- 1 The Parties undertake to afford each other the widest measure of co-operation in respect of the transfer of sentenced persons in accordance with the provisions of this Convention.
- 2 A person sentenced in the territory of a Party may be transferred to the territory of another Party, in accordance with the provisions of this

Convention, in order to serve the sentence imposed on him. To that end, he may express his interest to the sentencing State or to the administering State in being transferred under this Convention.

- 3 Transfer may be requested by either the sentencing State or the administering State.

### **Article 3 – Conditions for transfer**

- 1 A sentenced person may be transferred under this Convention only on the following conditions:
  - a if that person is a national of the administering State;
  - b if the judgment is final;
  - c if, at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or if the sentence is indeterminate;
  - d if the transfer is consented to by the sentenced person or, where in view of his age or his physical or mental condition one of the two States considers it necessary, by the sentenced person's legal representative;
  - e if the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory; and
  - f if the sentencing and administering States agree to the transfer.
- 2 In exceptional cases, Parties may agree to a transfer even if the time to be served by the sentenced person is less than that specified in paragraph 1.c.
- 3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, indicate that it intends to exclude the application of one of the procedures provided in Article 9.1.a and b in its relations with other Parties.
- 4 Any State may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define, as far as it is concerned, the term "national" for the purposes of this Convention.

### **Article 4 – Obligation to furnish information**

- 1 Any sentenced person to whom this Convention may apply shall be informed by the sentencing State of the substance of this Convention.
- 2 If the sentenced person has expressed an interest to the sentencing State in being transferred under this Convention, that State shall so inform the administering State as soon as practicable after the judgment becomes final.

- 3 The information shall include:
  - a the name, date and place of birth of the sentenced person;
  - b his address, if any, in the administering State;
  - c a statement of the facts upon which the sentence was based;
  - d the nature, duration and date of commencement of the sentence.
- 4 If the sentenced person has expressed his interest to the administering State, the sentencing State shall, on request, communicate to the State the information referred to in paragraph 3 above.
- 5 The sentenced person shall be informed, in writing, of any action taken by the sentencing State or by the administering State under the preceding paragraphs, as well as of any decision taken by either State on a request for transfer.

#### **Article 5 – Requests and replies**

- 1 Requests for transfer and replies shall be made in writing.
- 2 Requests shall be addressed by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State. Replies shall be communicated through the same channels.
- 3 Any Party may, by a declaration addressed to the Secretary General of the Council of Europe, indicate that it will use other channels of communication.
- 4 The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

#### **Article 6 – Supporting documents**

- 1 The administering State, if requested by the sentencing State, shall furnish it with:
  - a a document or statement indicating that the sentenced person is a national of that State;
  - b a copy of the relevant law of the administering State which provides that the acts or omissions on account of which the sentence has been imposed in the sentencing State constitute a criminal offence according to the law of the administering State, or would constitute a criminal offence if committed on its territory;
  - c a statement containing the information mentioned in Article 9.2.
- 2 If a transfer is requested, the sentencing State shall provide the following documents to the administering State, unless either State has already indicated that it will not agree to the transfer:
  - a a certified copy of the judgment and the law on which it is based;

- b a statement indicating how much of the sentence has already been served, including information on any pretrial detention, remission, and any other factor relevant to the enforcement of the sentence;
  - c a declaration containing the consent to the transfer as referred to in Article 3.1.d; and
  - d whenever appropriate, any medical or social reports on the sentenced person, information about his treatment in the sentencing State, and any recommendation for his further treatment in the administering State.
- 3 Either State may ask to be provided with any of the documents or statements referred to in paragraphs 1 or 2 above before making a request for transfer or taking a decision on whether or not to agree to the transfer.

#### **Article 7 – Consent and its verification**

- 1 The sentencing State shall ensure that the person required to give consent to the transfer in accordance with Article 3.1.d does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the sentencing State.
- 2 The sentencing State shall afford an opportunity to the administering State to verify through a consul or other official agreed upon with the administering State, that the consent is given in accordance with the conditions set out in paragraph 1 above.

#### **Article 8 – Effect of transfer for sentencing State**

- 1 The taking into charge of the sentenced person by the authorities of the administering State shall have the effect of suspending the enforcement of the sentence in the sentencing State.
- 2 The sentencing State may no longer enforce the sentence if the administering State considers enforcement of the sentence to have been completed.

#### **Article 9 – Effect of transfer for administering State**

- 1 The competent authorities of the administering State shall:
- a continue the enforcement of the sentence immediately or through a court or administrative order, under the conditions set out in Article 10, or
  - b convert the sentence, through a judicial or administrative procedure, into a decision of that State, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for the same offence, under the conditions set out in Article 11.

- 2 The administering State, if requested, shall inform the sentencing State before the transfer of the sentenced person as to which of these procedures it will follow.
- 3 The enforcement of the sentence shall be governed by the law of the administering State and that State alone shall be competent to take all appropriate decisions.
- 4 Any State which, according to its national law, cannot avail itself of one of the procedures referred to in paragraph 1 to enforce measures imposed in the territory of another Party on persons who for reasons of mental condition have been held not criminally responsible for the commission of the offence, and which is prepared to receive such persons for further treatment may, by way of a declaration addressed to the Secretary General of the Council of Europe, indicate the procedures it will follow in such cases.

#### **Article 10 – Continued enforcement**

- 1 In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.
- 2 If, however, this sentence is by its nature or duration incompatible with the law of the administering State, or its law so requires, that State may, by a court or administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the sentencing State, nor exceed the maximum prescribed by the law of the administering State.

#### **Article 11 – Conversion of sentence**

- 1 In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority:
  - a shall be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment imposed in the sentencing State;
  - b may not convert a sanction involving deprivation of liberty to a pecuniary sanction;
  - c shall deduct the full period of deprivation of liberty served by the sentenced person; and
  - d shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.

- 2 If the conversion procedure takes place after the transfer of the sentenced person, the administering State shall keep that person in custody or otherwise ensure his presence in the administering State pending the outcome of that procedure.

#### **Article 12 – Pardon, amnesty, commutation**

Each Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

#### **Article 13 – Review of judgment**

The sentencing State alone shall have the right to decide on any application for review of the judgment.

#### **Article 14 – Termination of enforcement**

The administering State shall terminate enforcement of the sentence as soon as it is informed by the sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.

#### **Article 15 – Information on enforcement**

The administering State shall provide information to the sentencing State concerning the enforcement of the sentence:

- a when it considers enforcement of the sentence to have been completed;
- b if the sentenced person has escaped from custody before enforcement of the sentence has been completed; or
- c if the sentencing State requests a special report.

#### **Article 16 – Transit**

- 1 A Party shall, in accordance with its law, grant a request for transit of a sentenced person through its territory if such a request is made by another Party and that State has agreed with another Party or with a third State to the transfer of that person to or from its territory.
- 2 A Party may refuse to grant transit:
  - a if the sentenced person is one of its nationals, or
  - b if the offence for which the sentence was imposed is not an offence under its own law.
- 3 Requests for transit and replies shall be communicated through the channels referred to in the provisions of Article 5.2 and 3.
- 4 A Party may grant a request for transit of a sentenced person through its territory made by a third State if that State has agreed with another Party to the transfer to or from its territory.

- 5 The Party requested to grant transit may hold the sentenced person in custody only for such time as transit through its territory requires.
- 6 The Party requested to grant transit may be asked to give an assurance that the sentenced person will not be prosecuted, or, except as provided in the preceding paragraph, detained, or otherwise subjected to any restriction on his liberty in the territory of the transit State for any offence committed or sentence imposed prior to his departure from the territory of the sentencing State.
- 7 No request for transit shall be required if transport is by air over the territory of a Party and no landing there is scheduled. However, each State may, by a declaration addressed to the Secretary General of the Council of Europe at the time of signature or of deposit of its instrument of ratification, acceptance, approval or accession, require that it be notified of any such transit over its territory.

#### **Article 17 – Language and costs**

- 1 Information under Article 4, paragraphs 2 to 4, shall be furnished in the language of the Party to which it is addressed or in one of the official languages of the Council of Europe.
- 2 Subject to paragraph 3 below, no translation of requests for transfer or of supporting documents shall be required.
- 3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, require that requests for transfer and supporting documents be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language in addition to the official language or languages of the Council of Europe.
- 4 Except as provided in Article 6.2.a, documents transmitted in application of this Convention need not be certified.
- 5 Any costs incurred in the application of this Convention shall be borne by the administering State, except costs incurred exclusively in the territory of the sentencing State.

#### **Article 18 – Signature and entry into force**

- 1 This Convention shall be open for signature by the member States of the Council of Europe and non-member States which have participated in its elaboration. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

- 2 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
- 3 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

#### **Article 19 – Accession by non-member States**

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States, may invite any State not a member of the Council and not mentioned in Article 18.1 to accede to this Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
- 2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### **Article 20 – Territorial application**

- 1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 21 – Temporal application**

This Convention shall be applicable to the enforcement of sentences imposed either before or after its entry into force.



#### **Article 22 – Relationship to other conventions and agreements**

- 1 This Convention does not affect the rights and undertakings derived from extradition treaties and other treaties on international co-operation in criminal matters providing for the transfer of detained persons for purposes of confrontation or testimony.
- 2 If two or more Parties have already concluded an agreement or treaty on the transfer of sentenced persons or otherwise have established their relations in this matter, or should they in future do so, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention.
- 3 The present Convention does not affect the right of States party to the European Convention on the International Validity of Criminal Judgments to conclude bilateral or multilateral agreements with one another on matters dealt with in that Convention in order to supplement its provisions or facilitate the application of the principles embodied in it.
- 4 If a request for transfer falls within the scope of both the present Convention and the European Convention on the International Validity of Criminal Judgments or another agreement or treaty on the transfer of sentenced persons, the requesting State shall, when making the request, indicate on the basis of which instrument it is made.

#### **Article 23 – Friendly settlement**

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of its application.

#### **Article 24 – Denunciation**

- 1 Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.
- 3 The present Convention shall, however, continue to apply to the enforcement of sentences of persons who have been transferred in conformity with the provisions of the Convention before the date on which such a denunciation takes effect.

#### **Article 25 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have

participated in the elaboration of this Convention and any State which has acceded to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 18.2 and 3, 19.2 and 20.2 and 3;
- d any other act, declaration, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 21st day of March 1983, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to it.

## **Additional Protocol to the Convention on the Transfer of Sentenced Persons**

Strasbourg, 18.XII.1997, ETS No. 167

### **Preamble**

The member States of the Council of Europe, and the other States signatory to this Protocol,

Desirous of facilitating the application of the Convention on the Transfer of Sentenced Persons opened for signature at Strasbourg on 21 March 1983 (hereinafter referred to as "the Convention") and, in particular, pursuing its acknowledged aims of furthering the ends of justice and the social rehabilitation of sentenced persons;

Aware that many States cannot extradite their own nationals;

Considering it desirable to supplement the Convention in certain respects,

Have agreed as follows:

#### **Article 1 – General provisions**

- 1 The words and expressions used in this Protocol shall be interpreted within the meaning of the Convention.
- 2 The provisions of the Convention shall apply to the extent that they are compatible with the provisions of this Protocol.

#### **Article 2 – Persons having fled from the sentencing State**

- 1 Where a national of a Party who is the subject of a sentence imposed in the territory of another Party as a part of a final judgment, seeks to avoid the execution or further execution of the sentence in the sentencing State by fleeing to the territory of the former Party before having served the sentence, the sentencing State may request the other Party to take over the execution of the sentence.
- 2 At the request of the sentencing State, the administering State may, prior to the arrival of the documents supporting the request, or prior to the decision on that request, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory,

pending a decision on the request. Requests for provisional measures shall include the information mentioned in paragraph 3 of Article 4 of the Convention. The penal position of the sentenced person shall not be aggravated as a result of any period spent in custody by reason of this paragraph.

- 3 The consent of the sentenced person shall not be required to the transfer of the execution of the sentence.

### **Article 3 – Sentenced persons subject to an expulsion or deportation order**

- 1 Upon being requested by the sentencing State, the administering State may, subject to the provisions of this Article, agree to the transfer of a sentenced person without the consent of that person, where the sentence passed on the latter, or an administrative decision consequential to that sentence, includes an expulsion or deportation order or any other measure as the result of which that person will no longer be allowed to remain in the territory of the sentencing State once he or she is released from prison.
- 2 The administering State shall not give its agreement for the purposes of paragraph 1 before having taken into consideration the opinion of the sentenced person.
- 3 For the purposes of the application of this Article, the sentencing State shall furnish the administering State with:
  - a a declaration containing the opinion of the sentenced person as to his or her proposed transfer, and
  - b a copy of the expulsion or deportation order or any other order having the effect that the sentenced person will no longer be allowed to remain in the territory of the sentencing State once he or she is released from prison.
- 4 Any person transferred under the provisions of this Article shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order, for any offence committed prior to his or her transfer other than that for which the sentence to be enforced was imposed, nor shall he or she for any other reason be restricted in his or her personal freedom, except in the following cases:
  - a when the sentencing State so authorises: a request for authorisation shall be submitted, accompanied by all relevant documents and a legal record of any statement made by the convicted person; authorisation shall be given when the offence for which it is requested would itself be subject to extradition under the law of the sentencing State or when extradition would be excluded only by reason of the amount of punishment;

- b when the sentenced person, having had an opportunity to leave the territory of the administering State, has not done so within 45 days of his or her final discharge, or if he or she has returned to that territory after leaving it.
- 5 Notwithstanding the provisions of paragraph 4, the administering State may take any measures necessary under its law, including proceedings *in absentia*, to prevent any legal effects of lapse of time.
- 6 Any contracting State may, by way of a declaration addressed to the Secretary General of the Council of Europe, indicate that it will not take over the execution of sentences under the circumstances described in this Article.

#### **Article 4 – Signature and entry into force**

- 1 This Protocol shall be open for signature by the member States of the Council of Europe and the other States signatory to the Convention. It shall be subject to ratification, acceptance or approval. A Signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously ratified, accepted or approved the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 2 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance or approval.
- 3 In respect of any signatory State which subsequently deposits its instrument of ratification, acceptance or approval, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit.

#### **Article 5 – Accession**

- 1 Any non-member State which has acceded to the Convention may accede to this Protocol after it has entered into force.
- 2 In respect of any acceding State, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession.

#### **Article 6 – Territorial application**

- 1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
- 2 Any Contracting State may, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the application of

this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 7 – Temporal application**

This Protocol shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

#### **Article 8 – Denunciation**

- 1 Any Contracting State may at any time denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.
- 3 This Protocol shall, however, continue to apply to the enforcement of sentences of persons who have been transferred in conformity with the provisions of both the Convention and this Protocol before the date on which such denunciation takes effect.
- 4 Denunciation of the Convention automatically entails denunciation of this Protocol.

#### **Article 9 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any Signatory, any Party and any other State which has been invited to accede to the Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles 4 or 5;
- d any other act, declaration, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 18th day of December 1997, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the other States signatory to the Convention and to any State invited to accede to the Convention.





**European Convention  
on the Transfer of Proceedings  
in Criminal Matters**



# **European Convention on the Transfer of Proceedings in Criminal Matters**

Strasbourg, 15.V.1972, ETS No. 73

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members;

Desiring to supplement the work which they have already accomplished in the field of criminal law with a view to arriving at more just and efficient sanctions;

Considering it useful to this end to ensure, in a spirit of mutual confidence, the organisation of criminal proceedings on the international level, in particular, by avoiding the disadvantages resulting from conflicts of competence,

Have agreed as follows:

## **Part I – Definitions**

### **Article 1**

For the purposes of this Convention:

- a “offence” comprises acts dealt with under the criminal law and those dealt with under the legal provisions listed in Appendix III to this Convention on condition that where an administrative authority is competent to deal with the offence it must be possible for the person concerned to have the case tried by a court;
- b “sanction” means any punishment or other measure incurred or pronounced in respect of an offence or in respect of a violation of the legal provisions listed in Appendix III.

## **Part II – Competence**

### **Article 2**

- 1 For the purposes of applying this Convention, any Contracting State shall have competence to prosecute under its own criminal law any offence to which the law of another Contracting State is applicable.

- 2 The competence conferred on a Contracting State exclusively by virtue of paragraph 1 of this Article may be exercised only pursuant to a request for proceedings presented by another Contracting State.

### **Article 3**

Any Contracting State having competence under its own law to prosecute an offence may, for the purposes of applying this Convention, waive or desist from proceedings against a suspected person who is being or will be prosecuted for the same offence by another Contracting State. Having regard to Article 21, paragraph 2, any such decision to waive or to desist from proceedings shall be provisional pending a final decision in the other Contracting State.

### **Article 4**

The requested State shall discontinue proceedings exclusively grounded on Article 2 when to its knowledge the right of punishment is extinguished under the law of the requesting State for a reason other than time limitation, to which Articles 10.c, 11.f and g, 22, 23 and 26 in particular apply.

### **Article 5**

The provisions of Part III of this Convention do not limit the competence given to a requested State by its municipal law in regard to prosecutions.

## **Part III – Transfer of proceedings**

### *Section 1 – Request for proceedings*

#### **Article 6**

- 1 When a person is suspected of having committed an offence under the law of a Contracting State, that State may request another Contracting State to take proceedings in the cases and under the conditions provided for in this Convention.
- 2 If under the provisions of this Convention a Contracting State may request another Contracting State to take proceedings, the competent authorities of the first State shall take that possibility into consideration.

#### **Article 7**

- 1 Proceedings may not be taken in the requested State unless the offence in respect of which the proceedings are requested would be an offence if committed in its territory and when, under these circumstances, the offender would be liable to sanction under its own law also.
- 2 If the offence was committed by a person of public status or against a person, an institution or any thing of public status in the requesting State,

it shall be considered in the requested State as having been committed by a person of public status or against such a person, an institution or any thing corresponding, in the latter State, to that against which it was actually committed.

#### **Article 8**

- 1 A Contracting State may request another Contracting State to take proceedings in any one or more of the following cases:
  - a if the suspected person is ordinarily resident in the requested State;
  - b if the suspected person is a national of the requested State or if that State is his State of origin;
  - c if the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested State;
  - d if proceedings for the same or other offences are being taken against the suspected person in the requested State;
  - e if it considers that transfer of the proceedings is warranted in the interests of arriving at the truth and in particular that the most important items of evidence are located in the requested State;
  - f if it considers that the enforcement in the requested State of a sentence if one were passed is likely to improve the prospects for the social rehabilitation of the person sentenced;
  - g if it considers that the presence of the suspected person cannot be ensured at the hearing of proceedings in the requesting State and that his presence in person at the hearing of proceedings in the requested State can be ensured;
  - h if it considers that it could not itself enforce a sentence if one were passed, even by having recourse to extradition, and that the requested State could do so;
- 2 Where the suspected person has been finally sentenced in a Contracting State, that State may request the transfer of proceedings in one or more of the cases referred to in paragraph 1 of this article only if it cannot itself enforce the sentence, even by having recourse to extradition, and if the other Contracting State does not accept enforcement of a foreign judgment as a matter of principle or refuses to enforce such sentence.

#### **Article 9**

- 1 The competent authorities in the requested State shall examine the request for proceedings made in pursuance of the preceding articles. They shall decide, in accordance with their own law, what action to take thereon.
- 2 Where the law of the requested State provides for the punishment of the offence by an administrative authority, that State shall, as soon as possible,

so inform the requesting State unless the requested State has made a declaration under paragraph 3 of this article.

- 3 Any Contracting State may at the time of signature, or when depositing its instrument of ratification, acceptance or accession, or at any later date indicate, by declaration addressed to the Secretary General of the Council of Europe, the conditions under which its domestic law permits the punishment of certain offences by an administrative authority. Such a declaration shall replace the notification envisaged in paragraph 2 of this article.

#### **Article 10**

The requested State shall not take action on the request:

- a if the request does not comply with the provisions of Articles 6, paragraph 1, and 7, paragraph 1;
- b if the institution of proceedings is contrary to the provisions of Article 35;
- c if, at the date on the request, the time limit for criminal proceedings has already expired in the requesting State under the legislation of that State.

#### **Article 11**

Save as provided for in Article 10 the requested State may not refuse acceptance of the request in whole or in part, except in any one or more of the following cases:

- a if it considers that the grounds on which the request is based under Article 8 are not justified;
- b if the suspected person is not ordinarily resident in the requested State;
- c if the suspected person is not a national of the requested State and was not ordinarily resident in the territory of that State at the time of the offence;
- d if it considers that the offence for which proceedings are requested is an offence of a political nature or a purely military or fiscal one;
- e if it considers that there are substantial grounds for believing that the request for proceedings was motivated by considerations of race, religion, nationality or political opinion;
- f if its own law is already applicable to the offence and if at the time of the receipt of the request proceedings were precluded by lapse of time according to that law; Article 26, paragraph 2, shall not apply in such a case;
- g if its competence is exclusively grounded on Article 2 and if at the time of the receipt of the request proceedings would be precluded by lapse of time according to its law, the prolongation of the time limit by six months under the terms of Article 23 being taken into consideration;

- h if the offence was committed outside the territory of the requesting State;
- i if proceedings would be contrary to the international undertakings of the requested State;
- j if proceedings would be contrary to the fundamental principles of the legal system of the requested State;
- k if the requesting State has violated a rule of procedure laid down in this Convention.

#### **Article 12**

- 1 The requested State shall withdraw its acceptance of the request if, subsequent to this acceptance, a ground mentioned in Article 10 of this Convention for not taking action on the request becomes apparent.
- 2 The requested State may withdraw its acceptance of the request:
  - a if it becomes apparent that the presence in person of the suspected person cannot be ensured at the hearing of the proceedings in that State or that any sentence, which might be passed, could not be enforced in that State;
  - b if one of the grounds for refusal mentioned in Article 11 becomes apparent before the case is brought before a court; or
  - c in other cases, if the requesting State agrees.

### *Section 2 – Transfer procedure*

#### **Article 13**

- 1 All requests specified in this Convention shall be made in writing. They, and all communications necessary for the application of this Convention, shall be sent either by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State or, by virtue of special mutual arrangement, direct by the authorities of the requesting State to those of the requested State; they shall be returned by the same channel.
- 2 In urgent cases, requests and communications may be sent through the International Criminal Police Organisation (Interpol).
- 3 Any Contracting State may, by declaration addressed to the Secretary General of the Council of Europe, give notice of its intention to adopt in so far as it itself is concerned rules of transmission other than those laid down in paragraph 1 of this article.

#### **Article 14**

If a Contracting State considers that the information supplied by another Contracting State is not adequate to enable it to apply this Convention,

it shall ask for the necessary additional information. It may prescribe a date for the receipt of such information.

#### **Article 15**

- 1 A request for proceedings shall be accompanied by the original, or a certified copy, of the criminal file and all other necessary documents. However, if the suspected person is remanded in custody in accordance with the provisions of Section 5 and if the requesting State is unable to transmit these documents at the same time as the request for proceedings, the documents may be sent subsequently.
- 2 The requesting State shall also inform the requested State in writing of any procedural acts performed or measures taken in the requesting State after the transmission of the request which have a bearing on the proceedings. This communication shall be accompanied by any relevant documents.

#### **Article 16**

- 1 The requested State shall promptly communicate its decision on the request for proceedings to the requesting State.
- 2 The requested State shall also inform the requesting State of a waiver of proceedings or of the decision taken as a result of proceedings. A certified copy of any written decision shall be transmitted to the requesting State.

#### **Article 17**

If the competence of the requested State is exclusively grounded on Article 2 that State shall inform the suspected person of the request for proceedings with a view to allowing him to present his views on the matter before that State has taken a decision on the request.

#### **Article 18**

- 1 Subject to paragraph 2 of this article, no translation of the documents relating to the application of this Convention shall be required.
- 2 Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, by declaration addressed to the Secretary General of the Council of Europe, reserve the right to require that, with the exception of the copy of the written decision referred to in Article 16, paragraph 2, the said documents be accompanied by a translation. The other Contracting States shall send the translations in either the national language of the receiving State or such one of the official languages of the Council of Europe as the receiving State shall indicate. However, such an indication is not obligatory. The other Contracting States may claim reciprocity.



- 3 This article shall be without prejudice to any provisions concerning translation of requests and supporting documents that may be contained in agreements or arrangements now in force or that may be concluded between two or more Contracting States.

#### **Article 19**

Documents transmitted in application of this Convention need not be authenticated.

#### **Article 20**

Contracting Parties shall not claim from each other the refund of any expenses resulting from the application of this Convention.

### *Section 3 – Effects in the requesting State of a request for proceedings*

#### **Article 21**

- 1 When the requesting State has requested proceedings, it can no longer prosecute the suspected person for the offence in respect of which the proceedings have been requested or enforce a judgment which has been pronounced previously in that State against him for that offence. Until the requested State's decision on the request for proceedings has been received, the requesting State shall, however, retain its right to take all steps in respect of prosecution, short of bringing the case to trial, or, as the case may be, allowing the competent administrative authority to decide on the case.
- 2 The right of prosecution and of enforcement shall revert to the requesting State:
  - a if the requested State informs it of a decision in accordance with Article 10 not to take action on the request;
  - b if the requested State informs it of a decision in accordance with Article 11 to refuse acceptance of the request;
  - c if the requested State informs it of a decision in accordance with Article 12 to withdraw acceptance of the request;
  - d if the requested State informs it of a decision not to institute proceedings or discontinue them;
  - e if it withdraws its request before the requested State has informed it of a decision to take action on the request.

#### **Article 22**

A request for proceedings, made in accordance with the provisions of this Part, shall have the effect in the requesting State of prolonging the time limit for proceedings by six months.

#### *Section 4 – Effects in the requested State of a request for proceedings*

##### **Article 23**

If the competence of the requested State is exclusively grounded on Article 2 the time limit for proceedings in that State shall be prolonged by six months.

##### **Article 24**

- 1 If proceedings are dependent on a complaint in both States the complaint brought in the requesting State shall have equal validity with that brought in the requested State.
- 2 If a complaint is necessary only in the requested State, that State may take proceedings even in the absence of a complaint if the person who is empowered to bring the complaint has not objected within a period of one month from the date of receipt by him of notice from the competent authority informing him of his right to object.

##### **Article 25**

In the requested State the sanction applicable to the offence shall be that prescribed by its own law unless that law provides otherwise. Where the competence of the requested State is exclusively grounded on Article 2, the sanction pronounced in that State shall not be more severe than that provided for in the law of the requesting State.

##### **Article 26**

- 1 Any act with a view to proceedings, taken in the requesting State in accordance with its law and regulations, shall have the same validity in the requested State as if it had been taken by the authorities of that State, provided that assimilation does not give such act a greater evidential weight than it has in the requesting State.
- 2 Any act which interrupts time limitation and which has been validly performed in the requesting State shall have the same effects in the requested State and vice versa.

#### *Section 5 – Provisional measures in the requested State*

##### **Article 27**

- 1 When the requesting State announces its intention to transmit a request for proceedings, and if the competence of the requested State would be exclusively grounded on Article 2, the requested State may, on application by the requesting State and by virtue of this Convention, provisionally arrest the suspected person:

- a if the law of the requested States authorises remand in custody for the offence, and
  - b if there are reasons to fear that the suspected person will abscond or that he will cause evidence to be suppressed.
- 2 The application for provisional arrest shall state that there exists a warrant of arrest or other order having the same effect, issued in accordance with the procedure laid down in the law of the requesting State; it shall also state for what offence proceedings will be requested and when and where such offence was committed and it shall contain as accurate a description of the suspected person as possible. It shall also contain a brief statement of the circumstances of the case.
- 3 An application for provisional arrest shall be sent direct by the authorities in the requesting State mentioned in Article 13 to the corresponding authorities in the requested State, by post or telegram or by any other means affording evidence in writing or accepted by the requested State. The requesting State shall be informed without delay of the result of its application.

#### **Article 28**

Upon receipt of a request for proceedings accompanied by the documents referred to in Article 15, paragraph 1, the requested State shall have jurisdiction to apply all such provisional measures, including remand in custody of the suspected person and seizure of property, as could be applied under its own law if the offence in respect of which proceedings are requested had been committed in its territory.

#### **Article 29**

- 1 The provisional measures provided in Articles 27 and 28 shall be governed by the provisions of this Convention and the law of the requested State. The law of that State, or the Convention shall also determine the conditions on which the measures may lapse.
- 2 These measures shall lapse in the cases referred to in Article 21, paragraph 2.
- 3 A person in custody shall in any event be released if he is arrested in pursuance of Article 27 and the requested State does not receive the request for proceedings within 18 days from the date of the arrest.
- 4 A person in custody shall in any event be released if he is arrested in pursuance of Article 27 and the documents which should accompany the request for proceedings have not been received by the requested State within 15 days from the receipt of the request for proceedings.
- 5 The period of custody applied exclusively by virtue of Article 27 shall not in any event exceed 40 days.

## **Part IV – Plurality of criminal proceedings**

### **Article 30**

- 1 Any Contracting State which, before the institution or in the course of proceedings for an offence which it considers to be neither of a political nature nor a purely military one, is aware of proceedings pending in another Contracting State against the same person in respect of the same offence shall consider whether it can either waive or suspend its own proceedings, or transfer them to the other State.
- 2 If it deems it advisable in the circumstances not to waive or suspend its own proceedings it shall so notify the other State in good time and in any event before judgment is given on the merits.

### **Article 31**

- 1 In the eventuality referred to in Article 30, paragraph 2, the States concerned shall endeavour as far as possible to determine, after evaluation in each of the circumstances mentioned in Article 8, which of them alone shall continue to conduct proceedings. During this consultative procedure the States concerned shall postpone judgment on the merits without however being obliged to prolong such postponement beyond a period of 30 days as from the despatch of the notification provided for in Article 30, paragraph 2.
- 2 The provisions of paragraph 1 shall not be binding:
  - a on the State despatching the notification provided for in Article 30, paragraph 2, if the main trial has been declared open there in the presence of the accused before despatch of the notification;
  - b on the State to which the notification is addressed, if the main trial has been declared open there in the presence of the accused before receipt of the notification.

### **Article 32**

In the interests of arriving at the truth and with a view to the application of an appropriate sanction, the States concerned shall examine whether it is expedient that one of them alone shall conduct proceedings and, if so, endeavour to determine which one, when:

- a several offences which are materially distinct and which fall under the criminal law of each of those States are ascribed either to a single person or to several persons having acted in unison;
- b a single offence which falls under the criminal law of each of those States is ascribed to several persons having acted in unison.

### **Article 33**

All decisions reached in accordance with Articles 31, paragraph 1, and 32 shall entail, as between the States concerned, all the consequences of a

transfer of proceedings as provided for in this Convention. The State which waives its own proceedings shall be deemed to have transferred them to the other State.

#### **Article 34**

The transfer procedure provided for in Section 2 of Part III shall apply in so far as its provisions are compatible with those contained in the present Part.

### **Part V – *Ne bis in idem***

#### **Article 35**

- 1 A person in respect of whom a final and enforceable criminal judgment has been rendered may for the same act neither be prosecuted nor sentenced nor subjected to enforcement of a sanction in another Contracting State:
  - a if he was acquitted;
  - b if the sanction imposed:
    - i has been completely enforced or is being enforced, or
    - ii has been wholly, or with respect to the part not enforced, the subject of a pardon or an amnesty, or
    - iii can no longer be enforced because of lapse of time;
  - c if the court convicted the offender without imposing a sanction.
- 2 Nevertheless, a Contracting State shall not, unless it has itself requested the proceedings, be obliged to recognise the effect of *ne bis in idem* if the act which gave rise to the judgment was directed against either a person or an institution or any thing having public status in that State, or if the subject of the judgment had himself a public status in that State.
- 3 Furthermore, a Contracting State where the act was committed or considered as such according to the law of that State shall not be obliged to recognise the effect of *ne bis in idem* unless that State has itself requested the proceedings.

#### **Article 36**

If new proceedings are instituted against a person who in another Contracting State has been sentenced for the same act, then any period of deprivation of liberty arising from the sentence enforced shall be deducted from the sanction which may be imposed.

#### **Article 37**

This Part shall not prevent the application of wider domestic provisions relating to the effect of *ne bis in idem* attached to foreign criminal judgments.

## **Part VI – Final clauses**

### **Article 38**

- 1 This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
- 2 This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.
- 3 In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

### **Article 39**

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto provided that the resolution containing such invitation received the unanimous agreement of the Members of the Council who have ratified the Convention.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

### **Article 40**

- 1 Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any Contracting State may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 45 of this Convention.

### **Article 41**

- 1 Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, declare that it avails itself of one or more of the reservations provided for in Appendix I or make a declaration provided for in Appendix II to this Convention.

- 2 Any Contracting State may wholly or partly withdraw a reservation or declaration it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
- 3 A Contracting State which has made a reservation in respect of any provision of this Convention may not claim the application of that provision by any other Contracting State; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

#### **Article 42**

- 1 Any Contracting State may at any time, by declaration addressed to the Secretary General of the Council of Europe, set out the legal provisions to be included in Appendix III to this Convention.
- 2 Any change of the national provisions listed in Appendix III shall be notified to the Secretary General of the Council of Europe if such a change renders the information in this appendix incorrect.
- 3 Any changes made in Appendix III in application of the preceding paragraphs shall take effect in each Contracting State one month after the date of their notification by the Secretary General of the Council of Europe.

#### **Article 43**

- 1 This Convention affects neither the rights and the undertakings derived from extradition treaties and international multilateral conventions concerning special matters, nor provisions concerning matters which are dealt with in the present Convention and which are contained in other existing conventions between Contracting States.
- 2 The Contracting States may not conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, except in order to supplement its provisions or facilitate application of the principles embodied in it.
- 3 Should two or more Contracting States, however, have already established their relations in this matter on the basis of uniform legislation, or instituted a special system of their own, or should they in future do so, they shall be entitled to regulate those relations accordingly, notwithstanding the terms of this Convention.
- 4 Contracting States ceasing to apply the terms of this Convention to their mutual relations in this matter in accordance with the provisions of the preceding paragraph shall notify the Secretary General of the Council of Europe to that effect.

#### **Article 44**

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

#### **Article 45**

- 1 This Convention shall remain in force indefinitely.
- 2 Any Contracting State may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 3 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

#### **Article 46**

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

- a any signature;
- b any deposit of an instrument of ratification, acceptance or accession;
- c any date of entry into force of this Convention in accordance with Article 38 thereof;
- d any declaration received in pursuance of the provisions of Article 9, paragraph 3;
- e any declaration received in pursuance of the provisions of Article 13, paragraph 3;
- f any declaration received in pursuance of the provisions of Article 18, paragraph 2;
- g any declaration received in pursuance of the provisions of Article 40, paragraphs 2 and 3;
- h any reservation or declaration made in pursuance of the provisions of Article 41, paragraph 1;
- i the withdrawal of any reservation or declaration carried out in pursuance of the provisions of Article 41, paragraph 2;
- j any declaration received in pursuance of Article 42, paragraph 1, and any subsequent notification received in pursuance of paragraph 2 of that article;
- k any notification received in pursuance of the provisions of Article 43, paragraph 4;
- l any notification received in pursuance of the provisions of Article 45 and the date on which denunciation takes effect.



#### **Article 47**

This Convention and the notifications and declarations authorised thereunder shall apply only to offences committed after the Convention comes into effect for the Contracting States involved.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 15th day of May, 1972, in English and in French, both texts being equally authoritative, in a single copy, which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory and acceding governments.

#### **Appendix I**

Each Contracting State may declare that it reserves the right:

- a to refuse a request for proceedings, if it considers that the offence is a purely religious offence;
- b to refuse a request for proceedings for an act the sanctions for which, in accordance with its own law, can be imposed only by an administrative authority;
- c not to accept Article 22;
- d not to accept Article 23;
- e not to accept the provisions contained in the second sentence of Article 25 for constitutional reasons;
- f not to accept the provisions laid down in Article 26, paragraph 2, where it is competent by virtue of its own law;
- g not to apply Articles 30 and 31 in respect of an act for which the sanctions, in accordance with its own law or that of the other State concerned, can be imposed only by an administrative authority.
- h not to accept Part V.

#### **Appendix II**

Any Contracting State may declare that for reasons arising out of its constitutional law it can make or receive requests for proceedings only in circumstances specified in its municipal law.

Any Contracting State may, by means of a declaration, define as far as it is concerned the term "national" within the meaning of this Convention.

### **Appendix III**

List of offences other than offences dealt with under criminal law

The following offences shall be assimilated to offences under criminal law

- in France:  
any unlawful behaviour sanctioned by a contravention de grande voirie.
- in the Federal Republic of Germany:  
any unlawful behaviour dealt with according to the procedure laid down in the Act of Violations of Regulations (Gesetz über Ordnungswidrigkeiten of 24 May 1968 BGB1 1968, I, 481).
- in Italy:  
any unlawful behaviour to which is applicable Act No. 317 of 3 March 1967.

## **European Conventions on Terrorism**



## **European Convention on the Suppression of Terrorism**

Strasbourg, 27.I.1977, ETS No. 90

The member States of the Council of Europe, signatory hereto,  
Considering that the aim of the Council of Europe is to achieve a greater unity between its members;  
Aware of the growing concern caused by the increase in acts of terrorism;  
Wishing to take effective measures to ensure that the perpetrators of such acts do not escape prosecution and punishment;  
Convinced that extradition is a particularly effective measure for achieving this result,  
Have agreed as follows;

### **Article 1**

For the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives:

- a an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
- b an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;
- c a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;
- d an offence involving kidnapping, the taking of a hostage or serious unlawful detention;
- e an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;
- f an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

### **Article 2**

- 1 For the purpose of extradition between Contracting States, a Contracting State may decide not to regard as a political offence or as an offence

connected with a political offence or as an offence inspired by political motives a serious offence involving an act of violence, other than one covered by Article 1, against the life, physical integrity or liberty of a person.

- 2 The same shall apply to a serious offence involving an act against property, other than one covered by Article 1, if the act created a collective danger for persons.
- 3 The same shall apply to an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

### **Article 3**

The provisions of all extradition treaties and arrangements applicable between Contracting States, including the European Convention on Extradition, are modified as between Contracting States to the extent that they are incompatible with this Convention.

### **Article 4**

For the purpose of this Convention and to the extent that any offence mentioned in Article 1 or 2 is not listed as an extraditable offence in any extradition convention or treaty existing between Contracting States, it shall be deemed to be included as such therein.

### **Article 5**

Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State has substantial grounds for believing that the request for extradition for an offence mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

### **Article 6**

- 1 Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over an offence mentioned in Article 1 in the case where the suspected offender is present in its territory and it does not extradite him after receiving a request for extradition from a Contracting State whose jurisdiction is based on a rule of jurisdiction existing equally in the law of the requested State.
- 2 This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

### **Article 7**

A Contracting State in whose territory a person suspected to have committed an offence mentioned in Article 1 is found and which has received

a request for extradition under the conditions mentioned in Article 6, paragraph 1, shall, if it does not extradite that person, submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.

#### **Article 8**

- 1 Contracting States shall afford one another the widest measure of mutual assistance in criminal matters in connection with proceedings brought in respect of the offences mentioned in Articles 1 or 2. The law of the requested State concerning mutual assistance in criminal matters shall apply in all cases. Nevertheless this assistance may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.
- 2 Nothing in this Convention shall be interpreted as imposing an obligation to afford mutual assistance if the requested State has substantial grounds for believing that the request for mutual assistance in respect of an offence mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that that person's position may be prejudiced for any of these reasons.
- 3 The provisions of all treaties and arrangements concerning mutual assistance in criminal matters applicable between Contracting States, including the European Convention on Mutual Assistance in Criminal Matters, are modified as between Contracting States to the extent that they are incompatible with this Convention.

#### **Article 9**

- 1 The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention.
- 2 It shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

#### **Article 10**

- 1 Any dispute between Contracting States concerning the interpretation or application of this Convention, which has not been settled in the framework of Article 9, paragraph 2, shall, at the request of any Party to the dispute, be referred to arbitration. Each Party shall nominate an arbitrator and the two arbitrators shall nominate a referee. If any Party has not nominated its arbitrator within the three months following the request for arbitration, he shall be nominated at the request of the other Party by the President of the European Court of Human Rights. If the latter should be a national of one of the Parties to the dispute, this duty shall be carried

out by the Vice-President of the Court or if the Vice-President is a national of one of the Parties to the dispute, by the most senior judge of the Court not being a national of one of the Parties to the dispute. The same procedure shall be observed if the arbitrators cannot agree on the choice of referee.

- 2 The arbitration tribunal shall lay down its own procedure. Its decisions shall be taken by majority vote. Its award shall be final.

#### **Article 11**

- 1 This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 2 The Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or approval.
- 3 In respect of a signatory State ratifying, accepting or approving subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification, acceptance or approval.

#### **Article 12**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.
- 2 Any State may, when depositing its instrument of ratification, acceptance or approval or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect immediately or at such later date as may be specified in the notification.

#### **Article 13**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, declare that it reserves the right to refuse extradition in respect of any offence mentioned in Article 1 which it considers to be a political offence, an offence connected with a political offence or an offence inspired by political motives, provided that it undertakes to take into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence, including:



- a that it created a collective danger to the life, physical integrity or liberty of persons; or
  - b that it affected persons foreign to the motives behind it; or
  - c that cruel or vicious means have been used in the commission of the offence.
- 2 Any State may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
- 3 A State which has made a reservation in accordance with paragraph 1 of this article may not claim the application of Article 1 by any other State; it may, however, if its reservation is partial or conditional, claim the application of that article in so far as it has itself accepted it.

#### **Article 14**

Any Contracting State may denounce this Convention by means of a written notification addressed to the Secretary General of the Council of Europe. Any such denunciation shall take effect immediately or at such later date as may be specified in the notification.

#### **Article 15**

This Convention ceases to have effect in respect of any Contracting State which withdraws from or ceases to be a member of the Council of Europe.

#### **Article 16**

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a any signature;
- b any deposit of an instrument of ratification, acceptance or approval;
- c any date of entry into force of this Convention in accordance with Article 11 thereof;
- d any declaration or notification received in pursuance of the provisions of Article 12;
- e any reservation made in pursuance of the provisions of Article 13, paragraph 1;
- f the withdrawal of any reservation effected in pursuance of the provisions of Article 13, paragraph 2;
- g any notification received in pursuance of Article 14 and the date on which denunciation takes effect;
- h any cessation of the effects of the Convention pursuant to Article 15.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 27th day of January 1977, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory States.

## **Protocol amending the European Convention on the Suppression of Terrorism**

Strasbourg, 15.V.2003, ETS No. 190

The member States of the Council of Europe, signatory to this Protocol,  
Bearing in mind the Committee of Ministers of the Council of Europe's Declaration of 12 September 2001 and its Decision of 21 September 2001 on the Fight against International Terrorism, and the Vilnius Declaration on Regional Co-operation and the Consolidation of Democratic Stability in Greater Europe adopted by the Committee of Ministers at its 110th Session in Vilnius on 3 May 2002;

Bearing in mind the Parliamentary Assembly of the Council of Europe's Recommendation 1550 (2002) on Combating terrorism and respect for human rights;

Bearing in mind the General Assembly of the United Nations Resolution A/RES/51/210 on measures to eliminate international terrorism and the annexed Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, and its Resolution A/RES/49/60 on measures to eliminate international terrorism and the Declaration on Measures to Eliminate International Terrorism annexed thereto;

Wishing to strengthen the fight against terrorism while respecting human rights, and mindful of the Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers of the Council of Europe on 11 July 2002;

Considering for that purpose that it would be appropriate to amend the European Convention on the Suppression of Terrorism (ETS No. 90) opened for signature in Strasbourg on 27 January 1977, hereinafter referred to as "the Convention";

Considering that it would be appropriate to update the list of international conventions in Article 1 of the Convention and to provide for a simplified procedure to subsequently update it as required;

Considering that it would be appropriate to strengthen the follow-up of the implementation of the Convention;

Considering that it would be appropriate to review the reservation regime;

Considering that it would be appropriate to open the Convention to the signature of all interested States,

Have agreed as follows:

#### **Article 1**

- 1 The introductory paragraph to Article 1 of the Convention shall become paragraph 1 of this article. In sub-paragraph b of this paragraph, the term "signed" shall be replaced by the term "concluded" and sub-paragraphs c, d, e and f of this paragraph shall be replaced by the following sub-paragraphs:
  - "c an offence within the scope of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted at New York on 14 December 1973;
  - d an offence within the scope of the International Convention Against the Taking of Hostages, adopted at New York on 17 December 1979;
  - e an offence within the scope of the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;
  - f an offence within the scope of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988;"
- 2 Paragraph 1 of Article 1 of the Convention shall be supplemented by the following four sub-paragraphs:
  - "g an offence within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;
  - h an offence within the scope of the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988;
  - i an offence within the scope of the International Convention for the Suppression of Terrorist Bombings, adopted at New York on 15 December 1997;
  - j an offence within the scope of the International Convention for the Suppression of the Financing of Terrorism, adopted at New York on 9 December 1999."
- 3 The text of Article 1 of the Convention shall be supplemented by the following paragraph:

"2 In so far as they are not covered by the conventions listed under paragraph 1, the same shall apply, for the purpose of extradition between Contracting States, not only to the commission of those principal offences as a perpetrator but also to:

  - a the attempt to commit any of these principal offences;

- b the participation as an accomplice in the perpetration of any of these principal offences or in an attempt to commit any of them;
- c organising the perpetration of, or directing others to commit or attempt to commit, any of these principal offences.”.

#### **Article 2**

Paragraph 3 of Article 2 of the Convention shall be amended to read as follows:

“3 The same shall apply to:

- a the attempt to commit any of the foregoing offences;
- b the participation as an accomplice in any of the foregoing offences or in an attempt to commit any such offence;
- c organising the perpetration of, or directing others to commit or attempt to commit, any of the foregoing offences.”.

#### **Article 3**

1 The text of Article 4 of the Convention shall become paragraph 1 of this article and a new sentence shall be added at the end of this paragraph as follows: “Contracting States undertake to consider such offences as extraditable offences in every extradition treaty subsequently concluded between them.”.

2 The text of Article 4 of the Convention shall be supplemented by the following paragraph:

“2 When a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, the requested Contracting State may, at its discretion, consider this Convention as a legal basis for extradition in relation to any of the offences mentioned in Articles 1 or 2.”.

#### **Article 4**

1 The text of Article 5 of the Convention shall become paragraph 1 of this article.

2 The text of Article 5 of the Convention shall be supplemented by the following paragraphs:

“2 Nothing in this Convention shall be interpreted as imposing on the requested State an obligation to extradite if the person subject of the extradition request risks being exposed to torture.

3 Nothing in this Convention shall be interpreted either as imposing on the requested State an obligation to extradite if the person subject of the extradition request risks being exposed to the death penalty or, where the

law of the requested State does not allow for life imprisonment, to life imprisonment without the possibility of parole, unless under applicable extradition treaties the requested State is under the obligation to extradite if the requesting State gives such assurance as the requested State considers sufficient that the death penalty will not be imposed or, where imposed, will not be carried out, or that the person concerned will not be subject to life imprisonment without the possibility of parole.”.

#### **Article 5**

A new article shall be inserted after Article 8 of the Convention and shall read as follows:

“Article 9

The Contracting States may conclude between themselves bilateral or multilateral agreements in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.”.

#### **Article 6**

- 1 Article 9 of the Convention shall become Article 10.
- 2 Paragraph 1 of new Article 10 shall be amended to read as follows:

“The European Committee on Crime Problems (CDPC) is responsible for following the application of the Convention. The CDPC:

  - a shall be kept informed regarding the application of the Convention;
  - b shall make proposals with a view to facilitating or improving the application of the Convention;
  - c shall make recommendations to the Committee of Ministers concerning the proposals for amendments to the Convention, and shall give its opinion on any proposals for amendments to the Convention submitted by a Contracting State in accordance with Articles 12 and 13;
  - d shall, at the request of a Contracting State, express an opinion on any question concerning the application of the Convention;
  - e shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of the execution of the Convention;
  - f shall make recommendations to the Committee of Ministers concerning non-member States of the Council of Europe to be invited to accede to the Convention in accordance with Article 14, paragraph 3;
  - g shall submit every year to the Committee of Ministers of the Council of Europe a report on the follow-up given to this article in the application of the Convention.”.
- 3 Paragraph 2 of new Article 10 shall be deleted.

## **Article 7**

- 1 Article 10 of the Convention shall become Article 11.
- 2 In the first sentence of paragraph 1 of new Article 11, the terms "Article 9, paragraph 2" shall be replaced by the terms "Article 10.e, or by negotiation". In the second sentence of this paragraph, the term "two" shall be deleted. The remaining sentences of this paragraph shall be deleted.
- 3 Paragraph 2 of new Article 11 shall become paragraph 6 of this article. The sentence "Where a majority cannot be reached, the referee shall have a casting vote" shall be added after the second sentence and in the last sentence the terms "Its award" shall be replaced by the terms "The tribunal's judgement".
- 4 The text of new Article 11 shall be supplemented by the following paragraphs:

"2 In the case of disputes involving Parties which are member States of the Council of Europe, where a Party fails to nominate its arbitrator in pursuance of paragraph 1 of this article within three months following the request for arbitration, an arbitrator shall be nominated by the President of the European Court of Human Rights at the request of the other Party.
- 5 In the case of disputes involving any Party which is not a member of the Council of Europe, where a Party fails to nominate its arbitrator in pursuance of paragraph 1 of this article within three months following the request for arbitration, an arbitrator shall be nominated by the President of the International Court of Justice at the request of the other Party.
- 6 In the cases covered by paragraphs 2 and 3 of this article, where the President of the Court concerned is a national of one of the Parties to the dispute, this duty shall be carried out by the Vice-President of the Court, or if the Vice-President is a national of one of the Parties to the dispute, by the most senior judge of the Court who is not a national of one of the Parties to the dispute.
- 7 The procedures referred to in paragraphs 2 or 3 and 4 above apply, *mutatis mutandis*, where the arbitrators fail to agree on the nomination of a referee in accordance with paragraph 1 of this article."

## **Article 8**

A new article shall be introduced after new Article 11 and shall read as follows:

"Article 12

- 1 Amendments to this Convention may be proposed by any Contracting State, or by the Committee of Ministers. Proposals for amendment shall

be communicated by the Secretary General of the Council of Europe to the Contracting States.

- 2 After having consulted the non-member Contracting States and, if necessary, the CDPC, the Committee of Ministers may adopt the amendment in accordance with the majority provided for in Article 20.d of the Statute of the Council of Europe. The Secretary General of the Council of Europe shall submit any amendments adopted to the Contracting States for acceptance.
- 3 Any amendment adopted in accordance with the above paragraph shall enter into force on the thirtieth day following notification by all the Parties to the Secretary General of their acceptance thereof.”.

#### **Article 9**

A new article shall be introduced after new Article 12 and shall read as follows:

##### “Article 13

- 1 In order to update the list of treaties in Article 1, paragraph 1, amendments may be proposed by any Contracting State or by the Committee of Ministers. These proposals for amendment shall only concern treaties concluded within the United Nations Organisation dealing specifically with international terrorism and having entered into force. They shall be communicated by the Secretary General of the Council of Europe to the Contracting States.
- 2 After having consulted the non-member Contracting States and, if necessary the CDPC, the Committee of Ministers may adopt a proposed amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe. The amendment shall enter into force following the expiry of a period of one year after the date on which it has been forwarded to the Contracting States. During this period, any Contracting State may notify the Secretary General of any objection to the entry into force of the amendment in its respect.
- 3 If one-third of the Contracting States notifies the Secretary General of an objection to the entry into force of the amendment, the amendment shall not enter into force.
- 4 If less than one-third of the Contracting States notifies an objection, the amendment shall enter into force for those Contracting States which have not notified an objection.
- 5 Once an amendment has entered into force in accordance with paragraph 2 of this article and a Contracting State has notified an objection to it, this amendment shall come into force in respect of the Contracting State concerned on the first day of the month following the date on



which it has notified the Secretary General of the Council of Europe of its acceptance.”.

#### **Article 10**

- 1 Article 11 of the Convention shall become Article 14.
- 2 In the first sentence of paragraph 1 of new Article 14 the terms “member States of the Council of Europe” shall be replaced by the terms “member States of and Observer States to the Council of Europe” and in the second and third sentences, the terms “or approval” shall be replaced by the terms “, approval or accession”.
- 3 The text of new Article 14 shall be supplemented by the following paragraph:

“3 The Committee of Ministers of the Council of Europe, after consulting the CDPC, may invite any State not a member of the Council of Europe, other than those referred to under paragraph 1 of this article, to accede to the Convention. The decision shall be taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.”.
- 4 Paragraph 3 of new Article 14 shall become paragraph 4 of this article, and the terms “or approving” and “or approval” shall be replaced respectively by the terms “, approving or acceding” and “, approval or accession”.

#### **Article 11**

- 1 Article 12 of the Convention shall become Article 15.
- 2 In the first sentence of paragraph 1 of new Article 15, the terms “or approval” shall be replaced by the terms “, approval or accession”.
- 3 In the first sentence of paragraph 2 of new Article 15, the terms “or approval” are replaced by the terms “, approval or accession”.

#### **Article 12**

- 1 Reservations to the Convention made prior to the opening for signature of the present Protocol shall not be applicable to the Convention as amended by the present Protocol.
- 2 Article 13 of the Convention shall become Article 16.
- 3 In the first sentence of paragraph 1 of new Article 16 the terms “Party to the Convention on 15 May 2003” shall be added before the term “may” and the terms “of the Protocol amending the Convention” shall be added after the term “approval”. A second sentence shall be added after the terms “political motives” and shall read: “The Contracting State

undertakes to apply this reservation on a case-by-case basis, through a duly reasoned decision and taking into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence, including:". The remainder of the first sentence shall be deleted, with the exception of sub-paragraphs a, b and c.

- 4 The text of new Article 16 shall be supplemented by the following paragraph:

"2 When applying paragraph 1 of this article, a Contracting State shall indicate the offences to which its reservation applies."

- 5 Paragraph 2 of new Article 16 shall become paragraph 3 of this article. In the first sentence of this paragraph, the term "Contracting" shall be added before the term "State" and the terms "the foregoing paragraph" shall be replaced by the terms "paragraph 1."

- 6 Paragraph 3 of new Article 16 shall become paragraph 4 of this article. In the first sentence of this paragraph, the term "Contracting" shall be added before the term "State".

- 7 The text of new Article 16 shall be supplemented by the following paragraphs:

"5 The reservations referred to in paragraph 1 of this article shall be valid for a period of three years from the day of the entry into force of this Convention in respect of the State concerned. However, such reservations may be renewed for periods of the same duration.

- 8 Twelve months before the date of expiry of the reservation, the Secretariat General of the Council of Europe shall give notice of that expiry to the Contracting State concerned. No later than three months before expiry, the Contracting State shall notify the Secretary General of the Council of Europe that it is upholding, amending or withdrawing its reservation. Where a Contracting State notifies the Secretary General of the Council of Europe that it is upholding its reservation, it shall provide an explanation of the grounds justifying its continuance. In the absence of notification by the Contracting State concerned, the Secretary General of the Council of Europe shall inform that Contracting State that its reservation is considered to have been extended automatically for a period of six months. Failure by the Contracting State concerned to notify its intention to uphold or modify its reservation before the expiry of that period shall cause the reservation to lapse.

- 9 Where a Contracting State does not extradite a person, in application of a reservation made in accordance with paragraph 1 of this article, after receiving a request for extradition from another Contracting State, it shall submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution, unless the requesting State and the requested State otherwise agree. The compe-

tent authorities, for the purpose of prosecution in the requested State, shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State. The requested State shall communicate, without undue delay, the final outcome of the proceedings to the requesting State and to the Secretary General of the Council of Europe, who shall forward it to the Conference provided for in Article 17.

- 10 The decision to refuse the extradition request, on the basis of a reservation made in accordance with paragraph 1 of this article, shall be forwarded promptly to the requesting State. If within a reasonable time no judicial decision on the merits has been taken in the requested State according to paragraph 7, the requesting State may communicate this fact to the Secretary General of the Council of Europe, who shall submit the matter to the Conference provided for in Article 17. This Conference shall consider the matter and issue an opinion on the conformity of the refusal with the Convention and shall submit it to the Committee of Ministers for the purpose of issuing a declaration thereon. When performing its functions under this paragraph, the Committee of Ministers shall meet in its composition restricted to the Contracting States.”.

### **Article 13**

A new article shall be introduced after new Article 16 of the Convention, and shall read as follows:

“Article 17

- 1 Without prejudice to the application of Article 10, there shall be a Conference of States Parties against Terrorism (hereinafter referred to as the “COSTER”) responsible for ensuring:
- a the effective use and operation of this Convention including the identification of any problems therein, in close contact with the CDPC;
  - b the examination of reservations made in accordance with Article 16 and in particular the procedure provided in Article 16, paragraph 8;
  - c the exchange of information on significant legal and policy developments pertaining to the fight against terrorism;
  - d the examination, at the request of the Committee of Ministers, of measures adopted within the Council of Europe in the field of the fight against terrorism and, where appropriate, the elaboration of proposals for additional measures necessary to improve international co-operation in the area of the fight against terrorism and, where co-operation in criminal matters is concerned, in consultation with the CDPC;
  - e the preparation of opinions in the area of the fight against terrorism and the execution of the terms of reference given by the Committee of Ministers.
- 2 The COSTER shall be composed of one expert appointed by each of the Contracting States. It will meet once a year on a regular basis, and on an

extraordinary basis at the request of the Secretary General of the Council of Europe or of at least one-third of the Contracting States.

- 3 The COSTER will adopt its own Rules of Procedure. The expenses for the participation of Contracting States which are member States of the Council of Europe shall be borne by the Council of Europe. The Secretariat of the Council of Europe will assist the COSTER in carrying out its functions pursuant to this article.
- 4 The CDPC shall be kept periodically informed about the work of the COSTER."

#### **Article 14**

Article 14 of the Convention shall become Article 18.

#### **Article 15**

Article 15 of the Convention shall be deleted.

#### **Article 16**

- 1 Article 16 of the Convention shall become Article 19.
- 2 In the introductory sentence of new Article 19, the terms "member States of the Council" shall be replaced by the terms "Contracting States".
- 3 In paragraph b of new Article 19, the terms "or approval" shall be replaced by the terms ", approval or accession".
- 4 In paragraph c of new Article 19, the number "11" shall read "14".
- 5 In paragraph d of new Article 19, the number "12" shall read "15".
- 6 Paragraphs e and f of new Article 19 shall be deleted.
- 7 Paragraph g of new Article 19 shall become paragraph e of this article and the number "14" shall read "18".
- 8 Paragraph h of new Article 19 shall be deleted.

#### **Article 17**

- 1 This Protocol shall be open for signature by member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by:
  - a signature without reservation as to ratification, acceptance or approval;  
or
  - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

**Article 18**

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 17.

**Article 19**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c the date of entry into force of this Protocol, in accordance with Article 18;
- d any other act, notification or communication relating to this Protocol.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 15th day of May 2003, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory States.



## **Council of Europe Convention on the Prevention of Terrorism**

Warsaw, 16.V.2005, CETS No. 196

The member States of the Council of Europe and the other Signatories hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Recognising the value of reinforcing co-operation with the other Parties to this Convention;

Wishing to take effective measures to prevent terrorism and to counter, in particular, public provocation to commit terrorist offences and recruitment and training for terrorism;

Aware of the grave concern caused by the increase in terrorist offences and the growing terrorist threat;

Aware of the precarious situation faced by those who suffer from terrorism, and in this connection reaffirming their profound solidarity with the victims of terrorism and their families;

Recognising that terrorist offences and the offences set forth in this Convention, by whoever perpetrated, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and recalling the obligation of all Parties to prevent such offences and, if not prevented, to prosecute and ensure that they are punishable by penalties which take into account their grave nature;

Recalling the need to strengthen the fight against terrorism and reaffirming that all measures taken to prevent or suppress terrorist offences have to respect the rule of law and democratic values, human rights and fundamental freedoms as well as other provisions of international law, including, where applicable, international humanitarian law;

Recognising that this Convention is not intended to affect established principles relating to freedom of expression and freedom of association;

Recalling that acts of terrorism have the purpose by their nature or context to seriously intimidate a population or unduly compel a government or an international organisation to perform or abstain from performing any act or seriously destabilise or destroy the fundamental political,

constitutional, economic or social structures of a country or an international organisation;

Have agreed as follows:

#### **Article 1 – Terminology**

- 1 For the purposes of this Convention, “terrorist offence” means any of the offences within the scope of and as defined in one of the treaties listed in the Appendix.
- 2 On depositing its instrument of ratification, acceptance, approval or accession, a State or the European Community which is not a party to a treaty listed in the Appendix may declare that, in the application of this Convention to the Party concerned, that treaty shall be deemed not to be included in the Appendix. This declaration shall cease to have effect as soon as the treaty enters into force for the Party having made such a declaration, which shall notify the Secretary General of the Council of Europe of this entry into force.

#### **Article 2 – Purpose**

The purpose of the present Convention is to enhance the efforts of Parties in preventing terrorism and its negative effects on the full enjoyment of human rights, in particular the right to life, both by measures to be taken at national level and through international co-operation, with due regard to the existing applicable multilateral or bilateral treaties or agreements between the Parties.

#### **Article 3 – National prevention policies**

- 1 Each Party shall take appropriate measures, particularly in the field of training of law enforcement authorities and other bodies, and in the fields of education, culture, information, media and public awareness raising, with a view to preventing terrorist offences and their negative effects while respecting human rights obligations as set forth in, where applicable to that Party, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other obligations under international law.
- 2 Each Party shall take such measures as may be necessary to improve and develop the co-operation among national authorities with a view to preventing terrorist offences and their negative effects by, *inter alia*:
  - a exchanging information;
  - b improving the physical protection of persons and facilities;
  - c enhancing training and coordination plans for civil emergencies.
- 3 Each Party shall promote tolerance by encouraging inter-religious and cross-cultural dialogue involving, where appropriate, non-governmental



organisations and other elements of civil society with a view to preventing tensions that might contribute to the commission of terrorist offences.

- 4 Each Party shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by terrorist offences and the offences set forth in this Convention and consider encouraging the public to provide factual, specific help to its competent authorities that may contribute to preventing terrorist offences and offences set forth in this Convention.

#### **Article 4 – International co-operation on prevention**

Parties shall, as appropriate and with due regard to their capabilities, assist and support each other with a view to enhancing their capacity to prevent the commission of terrorist offences, including through exchange of information and best practices, as well as through training and other joint efforts of a preventive character.

#### **Article 5 – Public provocation to commit a terrorist offence**

- 1 For the purposes of this Convention, "public provocation to commit a terrorist offence" means the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.
- 2 Each Party shall adopt such measures as may be necessary to establish public provocation to commit a terrorist offence, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

#### **Article 6 – Recruitment for terrorism**

- 1 For the purposes of this Convention, "recruitment for terrorism" means to solicit another person to commit or participate in the commission of a terrorist offence, or to join an association or group, for the purpose of contributing to the commission of one or more terrorist offences by the association or the group.
- 2 Each Party shall adopt such measures as may be necessary to establish recruitment for terrorism, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

#### **Article 7 – Training for terrorism**

- 1 For the purposes of this Convention, "training for terrorism" means to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to

the commission of a terrorist offence, knowing that the skills provided are intended to be used for this purpose.

- 2 Each Party shall adopt such measures as may be necessary to establish training for terrorism, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

#### **Article 8 – Irrelevance of the commission of a terrorist offence**

For an act to constitute an offence as set forth in Articles 5 to 7 of this Convention, it shall not be necessary that a terrorist offence be actually committed.

#### **Article 9 – Ancillary offences**

- 1 Each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law:
  - a Participating as an accomplice in an offence as set forth in Articles 5 to 7 of this Convention;
  - b Organising or directing others to commit an offence as set forth in Articles 5 to 7 of this Convention;
  - c Contributing to the commission of one or more offences as set forth in Articles 5 to 7 of this Convention by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
    - i be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in Articles 5 to 7 of this Convention; or
    - ii be made in the knowledge of the intention of the group to commit an offence as set forth in Articles 5 to 7 of this Convention.
- 2 Each Party shall also adopt such measures as may be necessary to establish as a criminal offence under, and in accordance with, its domestic law the attempt to commit an offence as set forth in Articles 6 and 7 of this Convention.

#### **Article 10 – Liability of legal entities**

- 1 Each Party shall adopt such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal entities for participation in the offences set forth in Articles 5 to 7 and 9 of this Convention.
- 2 Subject to the legal principles of the Party, the liability of legal entities may be criminal, civil or administrative.
- 3 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

#### **Article 11 – Sanctions and measures**

- 1 Each Party shall adopt such measures as may be necessary to make the offences set forth in Articles 5 to 7 and 9 of this Convention punishable by effective, proportionate and dissuasive penalties.
- 2 Previous final convictions pronounced in foreign States for offences set forth in the present Convention may, to the extent permitted by domestic law, be taken into account for the purpose of determining the sentence in accordance with domestic law.
- 3 Each Party shall ensure that legal entities held liable in accordance with Article 10 are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

#### **Article 12 – Conditions and safeguards**

- 1 Each Party shall ensure that the establishment, implementation and application of the criminalisation under Articles 5 to 7 and 9 of this Convention are carried out while respecting human rights obligations, in particular the right to freedom of expression, freedom of association and freedom of religion, as set forth in, where applicable to that Party, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other obligations under international law.
- 2 The establishment, implementation and application of the criminalisation under Articles 5 to 7 and 9 of this Convention should furthermore be subject to the principle of proportionality, with respect to the legitimate aims pursued and to their necessity in a democratic society, and should exclude any form of arbitrariness or discriminatory or racist treatment.

#### **Article 13 – Protection, compensation and support for victims of terrorism**

Each Party shall adopt such measures as may be necessary to protect and support the victims of terrorism that has been committed within its own territory. These measures may include, through the appropriate national schemes and subject to domestic legislation, *inter alia*, financial assistance and compensation for victims of terrorism and their close family members.

#### **Article 14 – Jurisdiction**

- 1 Each Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in this Convention:
  - a when the offence is committed in the territory of that Party;
  - b when the offence is committed on board a ship flying the flag of that Party, or on board an aircraft registered under the laws of that Party;
  - c when the offence is committed by a national of that Party.

- 2 Each Party may also establish its jurisdiction over the offences set forth in this Convention:
  - a when the offence was directed towards or resulted in the carrying out of an offence referred to in Article 1 of this Convention, in the territory of or against a national of that Party;
  - b when the offence was directed towards or resulted in the carrying out of an offence referred to in Article 1 of this Convention, against a State or government facility of that Party abroad, including diplomatic or consular premises of that Party;
  - c when the offence was directed towards or resulted in an offence referred to in Article 1 of this Convention, committed in an attempt to compel that Party to do or abstain from doing any act;
  - d when the offence is committed by a stateless person who has his or her habitual residence in the territory of that Party;
  - e when the offence is committed on board an aircraft which is operated by the Government of that Party.
- 3 Each Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in this Convention in the case where the alleged offender is present in its territory and it does not extradite him or her to a Party whose jurisdiction is based on a rule of jurisdiction existing equally in the law of the requested Party.
- 4 This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.
- 5 When more than one Party claims jurisdiction over an alleged offence set forth in this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

#### **Article 15 – Duty to investigate**

- 1 Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in this Convention may be present in its territory, the Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.
- 2 Upon being satisfied that the circumstances so warrant, the Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.
- 3 Any person in respect of whom the measures referred to in paragraph 2 are being taken shall be entitled to:
  - a communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is other-

wise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

- b be visited by a representative of that State;
  - c be informed of that person's rights under subparagraphs a. and b.
- 4 The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the Party in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
  - 5 The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any Party having a claim of jurisdiction in accordance with Article 14, paragraphs 1.c and 2.d to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

#### **Article 16 – Non application of the Convention**

This Convention shall not apply where any of the offences established in accordance with Articles 5 to 7 and 9 is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State, and no other State has a basis under Article 14, paragraph 1 or 2 of this Convention, to exercise jurisdiction, it being understood that the provisions of Articles 17 and 20 to 22 of this Convention shall, as appropriate, apply in those cases.

#### **Article 17 – International co-operation in criminal matters**

- 1 Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in Articles 5 to 7 and 9 of this Convention, including assistance in obtaining evidence in their possession necessary for the proceedings.
- 2 Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other agreements on mutual legal assistance that may exist between them. In the absence of such treaties or agreements, Parties shall afford one another assistance in accordance with their domestic law.
- 3 Parties shall co-operate with each other to the fullest extent possible under relevant law, treaties, agreements and arrangements of the requested Party with respect to criminal investigations or proceedings in relation to the offences for which a legal entity may be held liable in accordance with Article 10 of this Convention in the requesting Party.
- 4 Each Party may give consideration to establishing additional mechanisms to share with other Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to Article 10.

### **Article 18 – Extradite or prosecute**

- 1 The Party in the territory of which the alleged offender is present shall, when it has jurisdiction in accordance with Article 14, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that Party. Those authorities shall take their decision in the same manner as in the case of any other offence of a serious nature under the law of that Party.
- 2 Whenever a Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that Party to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this Party and the Party seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

### **Article 19 – Extradition**

- 1 The offences set forth in Articles 5 to 7 and 9 of this Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the Parties before the entry into force of this Convention. Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.
- 2 When a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, the requested Party may, if it so decides, consider this Convention as a legal basis for extradition in respect of the offences set forth in Articles 5 to 7 and 9 of this Convention. Extradition shall be subject to the other conditions provided by the law of the requested Party.
- 3 Parties which do not make extradition conditional on the existence of a treaty shall recognise the offences set forth in Articles 5 to 7 and 9 of this Convention as extraditable offences between themselves, subject to the conditions provided by the law of the requested Party.
- 4 Where necessary, the offences set forth in Articles 5 to 7 and 9 of this Convention shall be treated, for the purposes of extradition between Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the Parties that have established jurisdiction in accordance with Article 14.
- 5 The provisions of all extradition treaties and agreements concluded between Parties in respect of offences set forth in Articles 5 to 7 and 9 of

this Convention shall be deemed to be modified as between Parties to the extent that they are incompatible with this Convention.

#### **Article 20 – Exclusion of the political exception clause**

- 1 None of the offences referred to in Articles 5 to 7 and 9 of this Convention, shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence, an offence connected with a political offence, or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.
- 2 Without prejudice to the application of Articles 19 to 23 of the Vienna Convention on the Law of Treaties of 23 May 1969 to the other Articles of this Convention, any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession of the Convention, declare that it reserves the right to not apply paragraph 1 of this Article as far as extradition in respect of an offence set forth in this Convention is concerned. The Party undertakes to apply this reservation on a case-by-case basis, through a duly reasoned decision.
- 3 Any Party may wholly or partly withdraw a reservation it has made in accordance with paragraph 2 by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
- 4 A Party which has made a reservation in accordance with paragraph 2 of this Article may not claim the application of paragraph 1 of this Article by any other Party; it may, however, if its reservation is partial or conditional, claim the application of this Article in so far as it has itself accepted it.
- 5 The reservation shall be valid for a period of three years from the day of the entry into force of this Convention in respect of the Party concerned. However, such reservation may be renewed for periods of the same duration.
- 6 Twelve months before the date of expiry of the reservation, the Secretary General of the Council of Europe shall give notice of that expiry to the Party concerned. No later than three months before expiry, the Party shall notify the Secretary General of the Council of Europe that it is upholding, amending or withdrawing its reservation. Where a Party notifies the Secretary General of the Council of Europe that it is upholding its reservation, it shall provide an explanation of the grounds justifying its continuance. In the absence of notification by the Party concerned, the Secretary General of the Council of Europe shall inform that Party that its reservation is considered to have been extended automatically for a

period of six months. Failure by the Party concerned to notify its intention to uphold or modify its reservation before the expiry of that period shall cause the reservation to lapse.

- 7 Where a Party does not extradite a person in application of this reservation, after receiving an extradition request from another Party, it shall submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution, unless the requesting Party and the requested Party agree otherwise. The competent authorities, for the purpose of prosecution in the requested Party, shall take their decision in the same manner as in the case of any offence of a grave nature under the law of that Party. The requested Party shall communicate, without undue delay, the final outcome of the proceedings to the requesting Party and to the Secretary General of the Council of Europe, who shall forward it to the Consultation of the Parties provided for in Article 30.
- 8 The decision to refuse the extradition request on the basis of this reservation shall be forwarded promptly to the requesting Party. If within a reasonable time no judicial decision on the merits has been taken in the requested Party according to paragraph 7, the requesting Party may communicate this fact to the Secretary General of the Council of Europe, who shall submit the matter to the Consultation of the Parties provided for in Article 30. This Consultation shall consider the matter and issue an opinion on the conformity of the refusal with the Convention and shall submit it to the Committee of Ministers for the purpose of issuing a declaration thereon. When performing its functions under this paragraph, the Committee of Ministers shall meet in its composition restricted to the States Parties.

#### **Article 21 – Discrimination clause**

- 1 Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested Party has substantial grounds for believing that the request for extradition for offences set forth in Articles 5 to 7 and 9 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.
- 2 Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the person who is the subject of the extradition request risks being exposed to torture or to inhuman or degrading treatment or punishment.
- 3 Nothing in this Convention shall be interpreted either as imposing an obligation to extradite if the person who is the subject of the extradition



request risks being exposed to the death penalty or, where the law of the requested Party does not allow for life imprisonment, to life imprisonment without the possibility of parole, unless under applicable extradition treaties the requested Party is under the obligation to extradite if the requesting Party gives such assurance as the requested Party considers sufficient that the death penalty will not be imposed or, where imposed, will not be carried out, or that the person concerned will not be subject to life imprisonment without the possibility of parole.

#### **Article 22 – Spontaneous information**

- 1 Without prejudice to their own investigations or proceedings, the competent authorities of a Party may, without prior request, forward to the competent authorities of another Party information obtained within the framework of their own investigations, when they consider that the disclosure of such information might assist the Party receiving the information in initiating or carrying out investigations or proceedings, or might lead to a request by that Party under this Convention.
- 2 The Party providing the information may, pursuant to its national law, impose conditions on the use of such information by the Party receiving the information.
- 3 The Party receiving the information shall be bound by those conditions.
- 4 However, any Party may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to be bound by the conditions imposed by the Party providing the information under paragraph 2 above, unless it receives prior notice of the nature of the information to be provided and agrees to its transmission.

#### **Article 23 – Signature and entry into force**

- 1 This Convention shall be open for signature by the member States of the Council of Europe, the European Community and by non-member States which have participated in its elaboration.
- 2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which six Signatories, including at least four member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 2.
- 4 In respect of any Signatory which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the

date of the expression of its consent to be bound by the Convention in accordance with the provisions of paragraph 2.

#### **Article 24 – Accession to the Convention**

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting with and obtaining the unanimous consent of the Parties to the Convention, may invite any State which is not a member of the Council of Europe and which has not participated in its elaboration to accede to this convention. The decision shall be taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Parties entitled to sit on the Committee of Ministers.
- 2 In respect of any State acceding to the convention under paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### **Article 25 – Territorial application**

- 1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 26 – Effects of the Convention**

- 1 The present Convention supplements applicable multilateral or bilateral treaties or agreements between the Parties, including the provisions of the following Council of Europe treaties:
  - European Convention on Extradition, opened for signature, in Paris, on 13 December 1957 (ETS No. 24);

- European Convention on Mutual Assistance in Criminal Matters, opened for signature, in Strasbourg, on 20 April 1959 (ETS No. 30);
  - European Convention on the Suppression of Terrorism, opened for signature, in Strasbourg, on 27 January 1977 (ETS No. 90);
  - Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, opened for signature in Strasbourg on 17 March 1978 (ETS No. 99);
  - Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, opened for signature in Strasbourg on 8 November 2001 (ETS No. 182);
  - Protocol amending the European Convention on the Suppression of Terrorism, opened for signature in Strasbourg on 15 May 2003 (ETS No. 190).
- 2 If two or more Parties have already concluded an agreement or treaty on the matters dealt with in this Convention or have otherwise established their relations on such matters, or should they in future do so, they shall also be entitled to apply that agreement or treaty or to regulate those relations accordingly. However, where Parties establish their relations in respect of the matters dealt with in the present Convention other than as regulated therein, they shall do so in a manner that is not inconsistent with the Convention's objectives and principles.
  - 3 Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.
  - 4 Nothing in this Convention shall affect other rights, obligations and responsibilities of a Party and individuals under international law, including international humanitarian law.
  - 5 The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a Party in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

#### **Article 27 – Amendments to the Convention**

- 1 Amendments to this Convention may be proposed by any Party, the Committee of Ministers of the Council of Europe or the Consultation of the Parties.

- 2 Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the Parties.
- 3 Moreover, any amendment proposed by a Party or the Committee of Ministers shall be communicated to the Consultation of the Parties, which shall submit to the Committee of Ministers its opinion on the proposed amendment.
- 4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Consultation of the Parties and may approve the amendment.
- 5 The text of any amendment approved by the Committee of Ministers in accordance with paragraph 4 shall be forwarded to the Parties for acceptance.
- 6 Any amendment approved in accordance with paragraph 4 shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

#### **Article 28 – Revision of the Appendix**

- 1 In order to update the list of treaties in the Appendix, amendments may be proposed by any Party or by the Committee of Ministers. These proposals for amendment shall only concern universal treaties concluded within the United Nations system dealing specifically with international terrorism and having entered into force. They shall be communicated by the Secretary General of the Council of Europe to the Parties.
- 2 After having consulted the non-member Parties, the Committee of Ministers may adopt a proposed amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe. The amendment shall enter into force following the expiry of a period of one year after the date on which it has been forwarded to the Parties. During this period, any Party may notify the Secretary General of the Council of Europe of any objection to the entry into force of the amendment in respect of that Party.
- 3 If one third of the Parties notifies the Secretary General of the Council of Europe of an objection to the entry into force of the amendment, the amendment shall not enter into force.
- 4 If less than one third of the Parties notifies an objection, the amendment shall enter into force for those Parties which have not notified an objection.
- 5 Once an amendment has entered into force in accordance with paragraph 2 and a Party has notified an objection to it, this amendment shall come into force in respect of the Party concerned on the first day of the month following the date on which it notifies the Secretary General of the Council of Europe of its acceptance.

### **Article 29 – Settlement of disputes**

In the event of a dispute between Parties as to the interpretation or application of this Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to an arbitral tribunal whose decisions shall be binding upon the Parties to the dispute, or to the International Court of Justice, as agreed upon by the Parties concerned.

### **Article 30 – Consultation of the Parties**

- 1 The Parties shall consult periodically with a view to:
  - a making proposals to facilitate or improve the effective use and implementation of this Convention, including the identification of any problems and the effects of any declaration made under this Convention;
  - b formulating its opinion on the conformity of a refusal to extradite which is referred to them in accordance with Article 20, paragraph 8;
  - c making proposals for the amendment of this Convention in accordance with Article 27;
  - d formulating their opinion on any proposal for the amendment of this Convention which is referred to them in accordance with Article 27, paragraph 3;
  - e expressing an opinion on any question concerning the application of this Convention and facilitating the exchange of information on significant legal, policy or technological developments.
- 2 The Consultation of the Parties shall be convened by the Secretary General of the Council of Europe whenever he finds it necessary and in any case when a majority of the Parties or the Committee of Ministers request its convocation.
- 3 The Parties shall be assisted by the Secretariat of the Council of Europe in carrying out their functions pursuant to this Article.

### **Article 31 – Denunciation**

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

### **Article 32 – Notification**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the European Community, the non-member States which have participated in the elaboration of this

Convention as well as any State which has acceded to, or has been invited to accede to, this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Article 23;
- d any declaration made under Articles 1, paragraph 2, 22, paragraph 4, and 25;
- e any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Warsaw, this 16th day of May 2005, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the European Community, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to it.

## **Appendix**

- 1 Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
- 2 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971;
- 3 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted in New York on 14 December 1973;
- 4 International Convention Against the Taking of Hostages, adopted in New York on 17 December 1979;
- 5 Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980;
- 6 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988;
- 7 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;

- 8 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988;
- 9 International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997;
- 10 International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999.





## **European Conventions on Economic Crime**



# Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime

Strasbourg, 8.XI.1990, ETS No. 141

## Preamble

The member States of the Council of Europe and the other States signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Convinced of the need to pursue a common criminal policy aimed at the protection of society;

Considering that the fight against serious crime, which has become an increasingly international problem, calls for the use of modern and effective methods on an international scale;

Believing that one of these methods consists in depriving criminals of the proceeds from crime;

Considering that for the attainment of this aim a well functioning system of international co-operation also must be established,

Have agreed as follows:

## Chapter I – Use of terms

### Article I – Use of terms

For the purposes of this Convention:

- a “proceeds” means any economic advantage from criminal offences. It may consist of any property as defined in sub paragraph b of this article;
- b “property” includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to, or interest in such property;
- c “instrumentalities” means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;

- d “confiscation” means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property;
- e “predicate offence” means any criminal offence as a result of which proceeds were generated that may become the subject of an offence as defined in Article 6 of this Convention.

## **Chapter II – Measures to be taken at national level**

### **Article 2 – Confiscation measures**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds.
- 2 Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies only to offences or categories of offences specified in such declaration.

### **Article 3 – Investigative and provisional measures**

Each Party shall adopt such legislative and other measures as may be necessary to enable it to identify and trace property which is liable to confiscation pursuant to Article 2, paragraph 1, and to prevent any dealing in, transfer or disposal of such property.

### **Article 4 – Special investigative powers and techniques**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in Articles 2 and 3. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy.
- 2 Each Party shall consider adopting such legislative and other measures as may be necessary to enable it to use special investigative techniques facilitating the identification and tracing of proceeds and the gathering of evidence related thereto. Such techniques may include monitoring orders, observation, interception of telecommunications, access to computer systems and orders to produce specific documents.

### **Article 5 – Legal remedies**

Each Party shall adopt such legislative and other measures as may be necessary to ensure that interested parties affected by measures under

Articles 2 and 3 shall have effective legal remedies in order to preserve their rights.

#### **Article 6 – Laundering offences**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:
  - a the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;
  - b the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds; and, subject to its constitutional principles and the basic concepts of its legal system;
  - c the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;
  - d participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.
- 2 For the purposes of implementing or applying paragraph 1 of this article:
  - a it shall not matter whether the predicate offence was subject to the criminal jurisdiction of the Party;
  - b it may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;
  - c knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective, factual circumstances.
- 3 Each Party may adopt such measures as it considers necessary to establish also as offences under its domestic law all or some of the acts referred to in paragraph 1 of this article, in any or all of the following cases where the offender:
  - a ought to have assumed that the property was proceeds;
  - b acted for the purpose of making profit;
  - c acted for the purpose of promoting the carrying on of further criminal activity.
- 4 Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe declare that paragraph 1 of this article applies only to predicate offences or categories of such offences specified in such declaration.

## **Chapter III – International co-operation**

### *Section 1 – Principles of international co-operation*

#### **Article 7 – General principles and measures for international co-operation**

- 1 The Parties shall co-operate with each other to the widest extent possible for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds.
- 2 Each Party shall adopt such legislative or other measures as may be necessary to enable it to comply, under the conditions provided for in this chapter, with requests:
  - a for confiscation of specific items of property representing proceeds or instrumentalities, as well as for confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;
  - b for investigative assistance and provisional measures with a view to either form of confiscation referred to under a above.

### *Section 2 – Investigative assistance*

#### **Article 8 – Obligation to assist**

The Parties shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the aforementioned property.

#### **Article 9 – Execution of assistance**

The assistance pursuant to Article 8 shall be carried out as permitted by and in accordance with the domestic law of the requested Party and, to the extent not incompatible with such law, in accordance with the procedures specified in the request.

#### **Article 10 – Spontaneous information**

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on instrumentalities and proceeds, when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings or might lead to a request by that Party under this chapter.

### *Section 3 – Provisional measures*

#### **Article 11 – Obligation to take provisional measures**

- 1 At the request of another Party which has instituted criminal proceedings or proceedings for the purpose of confiscation, a Party shall take the

necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request.

- 2 A Party which has received a request for confiscation pursuant to Article 13 shall, if so requested, take the measures mentioned in paragraph 1 of this article in respect of any property which is the subject of the request or which might be such as to satisfy the request.

#### **Article 12 – Execution of provisional measures**

- 1 The provisional measures mentioned in Article 11 shall be carried out as permitted by and in accordance with the domestic law of the requested Party and, to the extent not incompatible with such law, in accordance with the procedures specified in the request.
- 2 Before lifting any provisional measure taken pursuant to this article, the requested Party shall, wherever possible, give the requesting Party an opportunity to present its reasons in favour of continuing the measure.

### *Section 4 – Confiscation*

#### **Article 13 – Obligation to confiscate**

- 1 A Party, which has received a request made by another Party for confiscation concerning instrumentalities or proceeds, situated in its territory, shall:
  - a enforce a confiscation order made by a court of a requesting Party in relation to such instrumentalities or proceeds; or
  - b submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it.
- 2 For the purposes of applying paragraph 1.b of this article, any Party shall whenever necessary have competence to institute confiscation proceedings under its own law.
- 3 The provisions of paragraph 1 of this article shall also apply to confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds, if property on which the confiscation can be enforced is located in the requested Party. In such cases, when enforcing confiscation pursuant to paragraph 1, the requested Party shall, if payment is not obtained, realise the claim on any property available for that purpose.
- 4 If a request for confiscation concerns a specific item of property, the Parties may agree that the requested Party may enforce the confiscation in the form of a requirement to pay a sum of money corresponding to the value of the property.

#### **Article 14 – Execution of confiscation**

- 1 The procedures for obtaining and enforcing the confiscation under Article 13 shall be governed by the law of the requested Party.
- 2 The requested Party shall be bound by the findings as to the facts in so far as they are stated in a conviction or judicial decision of the requesting Party or in so far as such conviction or judicial decision is implicitly based on them.
- 3 Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 2 of this article applies only subject to its constitutional principles and the basic concepts of its legal system.
- 4 If the confiscation consists in the requirement to pay a sum of money, the competent authority of the requested Party shall convert the amount thereof into the currency of that Party at the rate of exchange ruling at the time when the decision to enforce the confiscation is taken.
- 5 In the case of Article 13, paragraph 1.a, the requesting Party alone shall have the right to decide on any application for review of the confiscation order.

#### **Article 15 – Confiscated property**

Any property confiscated by the requested Party shall be disposed of by that Party in accordance with its domestic law, unless otherwise agreed by the Parties concerned.

#### **Article 16 – Right of enforcement and maximum amount of confiscation**

- 1 A request for confiscation made under Article 13 does not affect the right of the requesting Party to enforce itself the confiscation order.
- 2 Nothing in this Convention shall be so interpreted as to permit the total value of the confiscation to exceed the amount of the sum of money specified in the confiscation order. If a Party finds that this might occur, the Parties concerned shall enter into consultations to avoid such an effect.

#### **Article 17 – Imprisonment in default**

The requested Party shall not impose imprisonment in default or any other measure restricting the liberty of a person as a result of a request under Article 13, if the requesting Party has so specified in the request.

### *Section 5 – Refusal and postponement of co-operation*

#### **Article 18 – Grounds for refusal**

- 1 Co-operation under this chapter may be refused if:



- a the action sought would be contrary to the fundamental principles of the legal system of the requested Party; or
  - b the execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of the requested Party; or
  - c in the opinion of the requested Party, the importance of the case to which the request relates does not justify the taking of the action sought; or
  - d the offence to which the request relates is a political or fiscal offence; or
  - e the requested Party considers that compliance with the action sought would be contrary to the principle of ne bis in idem; or
  - f the offence to which the request relates would not be an offence under the law of the requested Party if committed within its jurisdiction. However, this ground for refusal applies to co-operation under Section 2 only in so far as the assistance sought involves coercive action.
- 2 Co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter, may also be refused if the measures sought could not be taken under the domestic law of the requested Party for the purposes of investigations or proceedings, had it been a similar domestic case.
- 3 Where the law of the requested Party so requires, co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter may also be refused if the measures sought or any other measures having similar effects would not be permitted under the law of the requesting Party, or, as regards the competent authorities of the requesting Party, if the request is not authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.
- 4 Co-operation under Section 4 of this chapter may also be refused if:
- a under the law of the requested Party confiscation is not provided for in respect of the type of offence to which the request relates; or
  - b without prejudice to the obligation pursuant to Article 13, paragraph 3, it would be contrary to the principles of the domestic laws of the requested Party concerning the limits of confiscation in respect of the relationship between an offence and:
    - i an economic advantage that might be qualified as its proceeds; or
    - ii property that might be qualified as its instrumentalities; or
  - c under the law of the requested Party confiscation may no longer be imposed or enforced because of the lapse of time; or

- d the request does not relate to a previous conviction, or a decision of a judicial nature or a statement in such a decision that an offence or several offences have been committed, on the basis of which the confiscation has been ordered or is sought; or
  - e confiscation is either not enforceable in the requesting Party, or it is still subject to ordinary means of appeal; or
  - f the request relates to a confiscation order resulting from a decision rendered *in absentia* of the person against whom the order was issued and, in the opinion of the requested Party, the proceedings conducted by the requesting Party leading to such decision did not satisfy the minimum rights of defence recognised as due to everyone against whom a criminal charge is made.
- 5 For the purpose of paragraph 4.f of this article a decision is not considered to have been rendered *in absentia* if:
- a it has been confirmed or pronounced after opposition by the person concerned; or
  - b it has been rendered on appeal, provided that the appeal was lodged by the person concerned.
- 6 When considering, for the purposes of paragraph 4.f of this article if the minimum rights of defence have been satisfied, the requested Party shall take into account the fact that the person concerned has deliberately sought to evade justice or the fact that that person, having had the possibility of lodging a legal remedy against the decision made *in absentia*, elected not to do so. The same will apply when the person concerned, having been duly served with the summons to appear, elected not to do so nor to ask for adjournment.
- 7 A Party shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for co-operation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.
- 8 Without prejudice to the ground for refusal provided for in paragraph 1.a of this article:
- a the fact that the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is a legal person shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter;
  - b the fact that the natural person against whom an order of confiscation of proceeds has been issued has subsequently died or the fact that a legal person against whom an order of confiscation of proceeds has been issued has subsequently been dissolved shall not be invoked

as an obstacle to render assistance in accordance with Article 13, paragraph 1.a.

#### **Article 19 – Postponement**

The requested Party may postpone action on a request if such action would prejudice investigations or proceedings by its authorities.

#### **Article 20 – Partial or conditional granting of a request**

Before refusing or postponing co-operation under this chapter, the requested Party shall, where appropriate after having consulted the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

### *Section 6 – Notification and protection of third parties' rights*

#### **Article 21 – Notification of documents**

- 1 The Parties shall afford each other the widest measure of mutual assistance in the serving of judicial documents to persons affected by provisional measures and confiscation.
- 2 Nothing in this article is intended to interfere with:
  - a the possibility of sending judicial documents, by postal channels, directly to persons abroad;
  - b the possibility for judicial officers, officials or other competent authorities of the Party of origin to effect service of judicial documents directly through the consular authorities of that Party or through judicial officers, officials or other competent authorities of the Party of destination,

unless the Party of destination makes a declaration to the contrary to the Secretary General of the Council of Europe at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

- 3 When serving judicial documents to persons abroad affected by provisional measures or confiscation orders issued in the sending Party, this Party shall indicate what legal remedies are available under its law to such persons.

#### **Article 22 – Recognition of foreign decisions**

- 1 When dealing with a request for co-operation under Sections 3 and 4, the requested Party shall recognise any judicial decision taken in the requesting Party regarding rights claimed by third parties.
- 2 Recognition may be refused if:

- a third parties did not have adequate opportunity to assert their rights; or
- b the decision is incompatible with a decision already taken in the requested Party on the same matter; or
- c it is incompatible with the ordre public of the requested Party; or
- d the decision was taken contrary to provisions on exclusive jurisdiction provided for by the law of the requested Party.

## *Section 7 – Procedural and other general rules*

### **Article 23 – Central authority**

- 1 The Parties shall designate a central authority or, if necessary, authorities, which shall be responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution.
- 2 Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of paragraph 1 of this article.

### **Article 24 – Direct communication**

- 1 The central authorities shall communicate directly with one another.
- 2 In the event of urgency, requests or communications under this chapter may be sent directly by the judicial authorities, including public prosecutors, of the requesting Party to such authorities of the requested Party. In such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.
- 3 Any request or communication under paragraphs 1 and 2 of this article may be made through the International Criminal Police Organisation (Interpol).
- 4 Where a request is made pursuant to paragraph 2 of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.
- 5 Requests or communications under Section 2 of this chapter, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.

### **Article 25 – Form of request and languages**

- 1 All requests under this chapter shall be made in writing. Modern means of telecommunications, such as telefax, may be used.

- 2 Subject to the provisions of paragraph 3 of this article, translations of the requests or supporting documents shall not be required.
- 3 At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, any Party may communicate to the Secretary General of the Council of Europe a declaration that it reserves the right to require that requests made to it and documents supporting such requests be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language as it may specify. The other Parties may apply the reciprocity rule.

#### **Article 26 – Legalisation**

Documents transmitted in application of this chapter shall be exempt from all legalisation formalities.

#### **Article 27 – Content of request**

- 1 Any request for co-operation under this chapter shall specify:
  - a the authority making the request and the authority carrying out the investigations or proceedings;
  - b the object of and the reason for the request;
  - c the matters, including the relevant facts (such as date, place and circumstances of the offence) to which the investigations or proceedings relate, except in the case of a request for notification;
  - d in so far as the co-operation involves coercive action:
    - i the text of the statutory provisions or, where this is not possible, a statement of the relevant law applicable; and
    - ii an indication that the measure sought or any other measures having similar effects could be taken in the territory of the requesting Party under its own law;
  - e where necessary and in so far as possible:
    - i details of the person or persons concerned, including name, date and place of birth, nationality and location, and, in the case of a legal person, its seat; and
    - ii the property in relation to which co-operation is sought, its location, its connection with the person or persons concerned, any connection with the offence, as well as any available information about other persons, interests in the property; and
  - f any particular procedure the requesting Party wishes to be followed.
- 2 A request for provisional measures under Section 3 in relation to seizure of property on which a confiscation order consisting in the requirement

to pay a sum of money may be realised shall also indicate a maximum amount for which recovery is sought in that property.

- 3 In addition to the indications mentioned in paragraph 1, any request under Section 4 shall contain:
  - a in the case of Article 13, paragraph 1.a:
    - i a certified true copy of the confiscation order made by the court in the requesting Party and a statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself;
    - ii an attestation by the competent authority of the requesting Party that the confiscation order is enforceable and not subject to ordinary means of appeal;
    - iii information as to the extent to which the enforcement of the order is requested; and
    - iv information as to the necessity of taking any provisional measures;
  - b in the case of Article 13, paragraph 1.b, a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;
  - c when third parties have had the opportunity to claim rights, documents demonstrating that this has been the case.

#### **Article 28 – Defective requests**

- 1 If a request does not comply with the provisions of this chapter or the information supplied is not sufficient to enable the requested Party to deal with the request, that Party may ask the requesting Party to amend the request or to complete it with additional information.
- 2 The requested Party may set a time limit for the receipt of such amendments or information.
- 3 Pending receipt of the requested amendments or information in relation to a request under Section 4 of this chapter, the requested Party may take any of the measures referred to in Sections 2 or 3 of this chapter.

#### **Article 29 – Plurality of requests**

- 1 Where the requested Party receives more than one request under Sections 3 or 4 of this chapter in respect of the same person or property, the plurality of requests shall not prevent that Party from dealing with the requests involving the taking of provisional measures.
- 2 In the case of plurality of requests under Section 4 of this chapter, the requested Party shall consider consulting the requesting Parties.

#### **Article 30 – Obligation to give reasons**

The requested Party shall give reasons for any decision to refuse, postpone or make conditional any co-operation under this chapter.

### **Article 31 – Information**

- 1 The requested Party shall promptly inform the requesting Party of:
  - a the action initiated on a request under this chapter;
  - b the final result of the action carried out on the basis of the request;
  - c a decision to refuse, postpone or make conditional, in whole or in part, any co-operation under this chapter;
  - d any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly; and
  - e in the event of provisional measures taken pursuant to a request under Sections 2 or 3 of this chapter, such provisions of its domestic law as would automatically lead to the lifting of the provisional measure.
- 2 The requesting Party shall promptly inform the requested Party of:
  - a any review, decision or any other fact by reason of which the confiscation order ceases to be wholly or partially enforceable; and
  - b any development, factual or legal, by reason of which any action under this chapter is no longer justified.
- 3 Where a Party, on the basis of the same confiscation order, requests confiscation in more than one Party, it shall inform all Parties which are affected by an enforcement of the order about the request.

### **Article 32 – Restriction of use**

- 1 The requested Party may make the execution of a request dependent on the condition that the information or evidence obtained will not, without its prior consent, be used or transmitted by the authorities of the requesting Party for investigations or proceedings other than those specified in the request.
- 2 Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe, declare that, without its prior consent, information or evidence provided by it under this chapter may not be used or transmitted by the authorities of the requesting Party in investigations or proceedings other than those specified in the request.

### **Article 33 – Confidentiality**

- 1 The requesting Party may require that the requested Party keep confidential the facts and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.
- 2 The requesting Party shall, if not contrary to basic principles of its national law and if so requested, keep confidential any evidence and information

provided by the requested Party, except to the extent that its disclosure is necessary for the investigations or proceedings described in the request.

- 3 Subject to the provisions of its domestic law, a Party which has received spontaneous information under Article 10 shall comply with any requirement of confidentiality as required by the Party which supplies the information. If the other Party cannot comply with such requirement, it shall promptly inform the transmitting Party.

#### **Article 34 – Costs**

The ordinary costs of complying with a request shall be borne by the requested Party. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the Parties shall consult in order to agree the conditions on which the request is to be executed and how the costs shall be borne.

#### **Article 35 – Damages**

- 1 When legal action on liability for damages resulting from an act or omission in relation to co-operation under this chapter has been initiated by a person, the Parties concerned shall consider consulting each other, where appropriate, to determine how to apportion any sum of damages due.
- 2 A Party which has become subject of a litigation for damages shall endeavour to inform the other Party of such litigation if that Party might have an interest in the case.

### **Chapter IV – Final provisions**

#### **Article 36 – Signature and entry into force**

- 1 This Convention shall be open for signature by the member States of the Council of Europe and non-member States which have participated in its elaboration. Such States may express their consent to be bound by:
  - a signature without reservation as to ratification, acceptance or approval; or
  - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three States, of which at least two are member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
- 4 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first



day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Convention in accordance with the provisions of paragraph 1.

#### **Article 37 – Accession to the Convention**

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States to the Convention, may invite any State not a member of the Council and not having participated in its elaboration to accede to this Convention, by a decision taken by the majority provided for in Article 20.d. of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
- 2 In respect of any acceding State the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### **Article 38 – Territorial application**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 39 – Relationship to other conventions and agreements**

- 1 This Convention does not affect the rights and undertakings derived from international multilateral conventions concerning special matters.
- 2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
- 3 If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be

entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention, if it facilitates international co-operation.

#### **Article 40 – Reservations**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more of the reservations provided for in Article 2, paragraph 2, Article 6, paragraph 4, Article 14, paragraph 3, Article 21, paragraph 2, Article 25, paragraph 3 and Article 32, paragraph 2. No other reservation may be made.
- 2 Any State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.
- 3 A Party which has made a reservation in respect of a provision of this Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

#### **Article 41 – Amendments**

- 1 Amendments to this Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe and to every non-member State which has acceded to or has been invited to accede to this Convention in accordance with the provisions of Article 37.
- 2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems which shall submit to the Committee of Ministers its opinion on that proposed amendment.
- 3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the European Committee on Crime Problems and may adopt the amendment.
- 4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
- 5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

#### **Article 42 – Settlement of disputes**

- 1 The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the interpretation and application of this Convention.

- 2 In case of a dispute between Parties as to the interpretation or application of this Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the European Committee on Crime Problems, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.

#### **Article 43 – Denunciation**

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.
- 3 The present Convention shall, however, continue to apply to the enforcement under Article 14 of confiscation for which a request has been made in conformity with the provisions of this Convention before the date on which such a denunciation takes effect.

#### **Article 44 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 36 and 37;
- d any reservation made under Article 40, paragraph 1;
- e any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, the 8th day of November 1990, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to it.



# **Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism**

Warsaw, 16.V.2005, CETS No. 198

## **Preamble**

The member States of the Council of Europe and the other Signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Convinced of the need to pursue a common criminal policy aimed at the protection of society;

Considering that the fight against serious crime, which has become an increasingly international problem, calls for the use of modern and effective methods on an international scale;

Believing that one of these methods consists in depriving criminals of the proceeds from crime and instrumentalities;

Considering that for the attainment of this aim a well functioning system of international co-operation also must be established;

Bearing in mind the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141 – hereinafter referred to as “the 1990 Convention”);

Recalling also Resolution 1373(2001) on threats to international peace and security caused by terrorist acts adopted by the Security Council of the United Nations on 28 September 2001, and particularly its paragraph 3.d;

Recalling the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999 and particularly its Articles 2 and 4, which oblige States Parties to establish the financing of terrorism as a criminal offence;

Convinced of the necessity to take immediate steps to ratify and to implement fully the International Convention for the Suppression of the Financing of Terrorism, cited above,

Have agreed as follows:

## Chapter I – Use of terms

### Article 1 – Use of terms

For the purposes of this Convention:

- a “proceeds” means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any property as defined in sub paragraph b of this article;
- b “property” includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property;
- c “instrumentalities” means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;
- d “confiscation” means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property;
- e “predicate offence” means any criminal offence as a result of which proceeds were generated that may become the subject of an offence as defined in Article 9 of this Convention.
- f “financial intelligence unit” (hereinafter referred to as “FIU”) means a central, national agency responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information
  - i concerning suspected proceeds and potential financing of terrorism, or
  - ii required by national legislation or regulation, in order to combat money laundering and financing of terrorism;
- g “freezing” or “seizure” means temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
- h “financing of terrorism” means the acts set out in Article 2 of the International Convention for the Suppression of the Financing of Terrorism, cited above.

## Chapter II – Financing of terrorism

### Article 2 – Application of the Convention to the financing of terrorism

- 1 Each Party shall adopt such legislative and other measures as may be necessary to enable it to apply the provisions contained in Chapters III, IV and V of this Convention to the financing of terrorism.
- 2 In particular, each Party shall ensure that it is able to search, trace, identify, freeze, seize and confiscate property, of a licit or illicit origin, used or allocated to be used by any means, in whole or in part, for the financing

of terrorism, or the proceeds of this offence, and to provide co-operation to this end to the widest possible extent.

## **Chapter III – Measures to be taken at national level**

### *Section 1 – General provisions*

#### **Article 3 – Confiscation measures**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds and laundered property.
- 2 Provided that paragraph 1 of this article applies to money laundering and to the categories of offences in the appendix to the Convention, each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies
  - a only in so far as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year. However, each Party may make a declaration on this provision in respect of the confiscation of the proceeds from tax offences for the sole purpose of being able to confiscate such proceeds, both nationally and through international cooperation, under national and international tax-debt recovery legislation; and/or
  - b only to a list of specified offences.
- 3 Parties may provide for mandatory confiscation in respect of offences which are subject to the confiscation regime. Parties may in particular include in this provision the offences of money laundering, drug trafficking, trafficking in human beings and any other serious offence.
- 4 Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law.

#### **Article 4 – Investigative and provisional measures**

Each Party shall adopt such legislative and other measures as may be necessary to enable it to identify, trace, freeze or seize rapidly property which is liable to confiscation pursuant to Article 3, in order in particular to facilitate the enforcement of a later confiscation.

#### **Article 5 – Freezing, seizure and confiscation**

Each Party shall adopt such legislative and other measures as may be necessary to ensure that the measures to freeze, seize and confiscate also encompass:

- a the property into which the proceeds have been transformed or converted;
- b property acquired from legitimate sources, if proceeds have been intermingled, in whole or in part, with such property, up to the assessed value of the intermingled proceeds;
- c income or other benefits derived from proceeds, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled, up to the assessed value of the intermingled proceeds, in the same manner and to the same extent as proceeds.

#### **Article 6 – Management of frozen or seized property**

Each Party shall adopt such legislative or other measures as may be necessary to ensure proper management of frozen or seized property in accordance with Articles 4 and 5 of this Convention.

#### **Article 7 – Investigative powers and techniques**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in Articles 3, 4 and 5. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy.
- 2 Without prejudice to paragraph 1, each Party shall adopt such legislative and other measures as may be necessary to enable it to:
  - a determine whether a natural or legal person is a holder or beneficial owner of one or more accounts, of whatever nature, in any bank located in its territory and, if so obtain all of the details of the identified accounts;
  - b obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more specified accounts, including the particulars of any sending or recipient account;
  - c monitor, during a specified period, the banking operations that are being carried out through one or more identified accounts; and,
  - d ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been sought or obtained in accordance with sub-paragraphs a, b, or c, or that an investigation is being carried out.

Parties shall consider extending this provision to accounts held in non-bank financial institutions.

- 3 Each Party shall consider adopting such legislative and other measures as may be necessary to enable it to use special investigative techniques



facilitating the identification and tracing of proceeds and the gathering of evidence related thereto, such as observation, interception of telecommunications, access to computer systems and order to produce specific documents.

#### **Article 8 – Legal remedies**

Each Party shall adopt such legislative and other measures as may be necessary to ensure that interested parties affected by measures under Articles 3, 4 and 5 and such other provisions in this Section as are relevant, shall have effective legal remedies in order to preserve their rights.

#### **Article 9 – Laundering offences**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:
  - a the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;
  - b the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds;  
and, subject to its constitutional principles and the basic concepts of its legal system;
  - c the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;
  - d participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.
- 2 For the purposes of implementing or applying paragraph 1 of this article:
  - a it shall not matter whether the predicate offence was subject to the criminal jurisdiction of the Party;
  - b it may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;
  - c knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective, factual circumstances.
- 3 Each Party may adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this Article, in either or both of the following cases where the offender

- a suspected that the property was proceeds,
  - b ought to have assumed that the property was proceeds.
- 4 Provided that paragraph 1 of this article applies to the categories of predicate offences in the appendix to the Convention, each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies:
- a only in so far as the predicate offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year, or for those Parties that have a minimum threshold for offences in their legal system, in so far as the offence is punishable by deprivation of liberty or a detention order for a minimum of more than six months; and/or
  - b only to a list of specified predicate offences; and/or
  - c to a category of serious offences in the national law of the Party.
- 5 Each Party shall ensure that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for money laundering.
- 6 Each Party shall ensure that a conviction for money laundering under this Article is possible where it is proved that the property, the object of paragraph 1.a or b of this article, originated from a predicate offence, without it being necessary to establish precisely which offence.
- 7 Each Party shall ensure that predicate offences for money laundering extend to conduct that occurred in another State, which constitutes an offence in that State, and which would have constituted a predicate offence had it occurred domestically. Each Party may provide that the only prerequisite is that the conduct would have constituted a predicate offence had it occurred domestically.

#### **Article 10 – Corporate liability**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
- a a power of representation of the legal person; or
  - b an authority to take decisions on behalf of the legal person; or
  - c an authority to exercise control within the legal person,
- as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.

- 2 Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.
- 3 Liability of a legal person under this Article shall not exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to, the criminal offences mentioned in paragraph 1.
- 4 Each Party shall ensure that legal persons held liable in accordance with this Article, shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

#### **Article 11 – Previous decisions**

Each Party shall adopt such legislative and other measures as may be necessary to provide for the possibility of taking into account, when determining the penalty, final decisions against a natural or legal person taken in another Party in relation to offences established in accordance with this Convention.

### *Section 2 - Financial intelligence unit (FIU) and prevention*

#### **Article 12 – Financial intelligence unit (FIU)**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish an FIU as defined in this Convention.
- 2 Each Party shall adopt such legislative and other measures as may be necessary to ensure that its FIU has access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of suspicious transaction reports.

#### **Article 13 – Measures to prevent money laundering**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to institute a comprehensive domestic regulatory and supervisory or monitoring regime to prevent money laundering and shall take due account of applicable international standards, including in particular the recommendations adopted by the Financial Action Task Force on Money Laundering (FATF).
- 2 In that respect, each Party shall adopt, in particular, such legislative and other measures as may be necessary to:
  - a require legal and natural persons which engage in activities which are particularly likely to be used for money laundering purposes, and as far as these activities are concerned, to:

- i identify and verify the identity of their customers and, where applicable, their ultimate beneficial owners, and to conduct on-going due diligence on the business relationship, while taking into account a risk based approach;
    - ii report suspicions on money laundering subject to safeguard;
    - iii take supporting measures, such as record keeping on customer identification and transactions, training of personnel and the establishment of internal policies and procedures, and if appropriate, adapted to their size and nature of business;
  - b prohibit, as appropriate, the persons referred to in sub-paragraph a from disclosing the fact that a suspicious transaction report or related information has been transmitted or that a money laundering investigation is being or may be carried out;
  - c ensure that the persons referred to in sub-paragraph a are subject to effective systems for monitoring, and where applicable supervision, with a view to ensure their compliance with the requirements to combat money laundering, where appropriate on a risk sensitive basis.
- 3 In that respect, each Party shall adopt such legislative or other measures as may be necessary to detect the significant physical cross border transportation of cash and appropriate bearer negotiable instruments.

#### **Article 14 – Postponement of domestic suspicious transactions**

Each Party shall adopt such legislative and other measures as may be necessary to permit urgent action to be taken by the FIU or, as appropriate, by any other competent authorities or body, when there is a suspicion that a transaction is related to money laundering, to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm the suspicion. Each party may restrict such a measure to cases where a suspicious transaction report has been submitted. The maximum duration of any suspension or withholding of consent to a transaction shall be subject to any relevant provisions in national law.

### **Chapter IV – International co-operation**

#### *Section 1 – Principles of international co-operation*

##### **Article 15 – General principles and measures for international co-operation**

- 1 The Parties shall mutually co operate with each other to the widest extent possible for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds.
- 2 Each Party shall adopt such legislative or other measures as may be necessary to enable it to comply, under the conditions provided for in this chapter, with requests:

- a for confiscation of specific items of property representing proceeds or instrumentalities, as well as for confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;
  - b for investigative assistance and provisional measures with a view to either form of confiscation referred to under a above.
- 3 Investigative assistance and provisional measures sought in paragraph 2.b shall be carried out as permitted by and in accordance with the internal law of the requested Party. Where the request concerning one of these measures specifies formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to the fundamental principles of its law.
  - 4 Each Party shall adopt such legislative or other measures as may be necessary to ensure that the requests coming from other Parties in order to identify, trace, freeze or seize the proceeds and instrumentalities, receive the same priority as those made in the framework of internal procedures.

## *Section 2 – Investigative assistance*

### **Article 16 – Obligation to assist**

The Parties shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the aforementioned property.

### **Article 17 – Requests for information on bank accounts**

- 1 Each Party shall, under the conditions set out in this article, take the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide the particulars of the identified accounts.
- 2 The obligation set out in this article shall apply only to the extent that the information is in the possession of the bank keeping the account.
- 3 In addition to the requirements of Article 37, the requesting party shall, in the request:
  - a state why it considers that the requested information is likely to be of substantial value for the purpose of the criminal investigation into the offence;

- b state on what grounds it presumes that banks in the requested Party hold the account and specify, to the widest extent possible, which banks and/or accounts may be involved; and
  - c include any additional information available which may facilitate the execution of the request.
- 4 The requested Party may make the execution of such a request dependant on the same conditions as it applies in respect of requests for search and seizure.
  - 5 Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that this article applies only to the categories of offences specified in the list contained in the appendix to this Convention.
  - 6 Parties may extend this provision to accounts held in non-bank financial institutions. Such extension may be made subject to the principle of reciprocity.

#### **Article 18 – Requests for information on banking transactions**

- 1 On request by another Party, the requested Party shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.
- 2 The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank holding the account.
- 3 In addition to the requirements of Article 37, the requesting Party shall in its request indicate why it considers the requested information relevant for the purpose of the criminal investigation into the offence.
- 4 The requested Party may make the execution of such a request dependant on the same conditions as it applies in respect of requests for search and seizure.
- 5 Parties may extend this provision to accounts held in non-bank financial institutions. Such extension may be made subject to the principle of reciprocity.

#### **Article 19 – Requests for the monitoring of banking transactions**

- 1 Each Party shall ensure that, at the request of another Party, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Party.

- 2 In addition to the requirements of Article 37, the requesting Party shall in its request indicate why it considers the requested information relevant for the purpose of the criminal investigation into the offence.
- 3 The decision to monitor shall be taken in each individual case by the competent authorities of the requested Party, with due regard for the national law of that Party.
- 4 The practical details regarding the monitoring shall be agreed between the competent authorities of the requesting and requested Parties.
- 5 Parties may extend this provision to accounts held in non-bank financial institutions.

#### **Article 20 – Spontaneous information**

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on instrumentalities and proceeds, when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings or might lead to a request by that Party under this chapter.

### *Section 3 – Provisional measures*

#### **Article 21 – Obligation to take provisional measures**

- 1 At the request of another Party which has instituted criminal proceedings or proceedings for the purpose of confiscation, a Party shall take the necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request.
- 2 A Party which has received a request for confiscation pursuant to Article 23 shall, if so requested, take the measures mentioned in paragraph 1 of this article in respect of any property which is the subject of the request or which might be such as to satisfy the request.

#### **Article 22 – Execution of provisional measures**

- 1 After the execution of the provisional measures requested in conformity with paragraph 1 of Article 21, the requesting Party shall provide spontaneously and as soon as possible to the requested Party all information which may question or modify the extent of these measures. The requesting Party shall also provide without delays all complementary information requested by the requested Party and which is necessary for the implementation of and the follow up to the provisional measures.

- 2 Before lifting any provisional measure taken pursuant to this article, the requested Party shall, wherever possible, give the requesting Party an opportunity to present its reasons in favour of continuing the measure.

#### *Section 4 – Confiscation*

##### **Article 23 – Obligation to confiscate**

- 1 A Party, which has received a request made by another Party for confiscation concerning instrumentalities or proceeds, situated in its territory, shall:
  - a enforce a confiscation order made by a court of a requesting Party in relation to such instrumentalities or proceeds; or
  - b submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it.
- 2 For the purposes of applying paragraph 1.b of this article, any Party shall whenever necessary have competence to institute confiscation proceedings under its own law.
- 3 The provisions of paragraph 1 of this article shall also apply to confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds, if property on which the confiscation can be enforced is located in the requested Party. In such cases, when enforcing confiscation pursuant to paragraph 1, the requested Party shall, if payment is not obtained, realise the claim on any property available for that purpose.
- 4 If a request for confiscation concerns a specific item of property, the Parties may agree that the requested Party may enforce the confiscation in the form of a requirement to pay a sum of money corresponding to the value of the property.
- 5 The Parties shall co operate to the widest extent possible under their domestic law with those Parties which request the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of this Convention.

##### **Article 24 – Execution of confiscation**

- 1 The procedures for obtaining and enforcing the confiscation under Article 23 shall be governed by the law of the requested Party.
- 2 The requested Party shall be bound by the findings as to the facts in so far as they are stated in a conviction or judicial decision of the requesting Party or in so far as such conviction or judicial decision is implicitly based on them.



- 3 Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 2 of this article applies only subject to its constitutional principles and the basic concepts of its legal system.
- 4 If the confiscation consists in the requirement to pay a sum of money, the competent authority of the requested Party shall convert the amount thereof into the currency of that Party at the rate of exchange ruling at the time when the decision to enforce the confiscation is taken.
- 5 In the case of Article 23, paragraph 1.a, the requesting Party alone shall have the right to decide on any application for review of the confiscation order.

#### **Article 25 – Confiscated property**

- 1 Property confiscated by a Party pursuant to Articles 23 and 24 of this Convention, shall be disposed of by that Party in accordance with its domestic law and administrative procedures.
- 2 When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated property to the requesting Party so that it can give compensation to the victims of the crime or return such property to their legitimate owners.
- 3 When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such property, in accordance with its domestic law or administrative procedures.

#### **Article 26 – Right of enforcement and maximum amount of confiscation**

- 1 A request for confiscation made under Articles 23 and 24 does not affect the right of the requesting Party to enforce itself the confiscation order.
- 2 Nothing in this Convention shall be so interpreted as to permit the total value of the confiscation to exceed the amount of the sum of money specified in the confiscation order. If a Party finds that this might occur, the Parties concerned shall enter into consultations to avoid such an effect.

#### **Article 27 – Imprisonment in default**

The requested Party shall not impose imprisonment in default or any other measure restricting the liberty of a person as a result of a request under Article 23, if the requesting Party has so specified in the request.

## *Section 5 – Refusal and postponement of co-operation*

### **Article 28 – Grounds for refusal**

- 1 Co-operation under this chapter may be refused if:
  - a the action sought would be contrary to the fundamental principles of the legal system of the requested Party; or
  - b the execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of the requested Party; or
  - c in the opinion of the requested Party, the importance of the case to which the request relates does not justify the taking of the action sought; or
  - d the offence to which the request relates is a fiscal offence, with the exception of the financing of terrorism;
  - e the offence to which the request relates is a political offence, with the exception of the financing of terrorism; or
  - f the requested Party considers that compliance with the action sought would be contrary to the principle of ne bis in idem; or
  - g the offence to which the request relates would not be an offence under the law of the requested Party if committed within its jurisdiction. However, this ground for refusal applies to co-operation under Section 2 only in so far as the assistance sought involves coercive action. Where dual criminality is required for co-operation under this chapter, that requirement shall be deemed to be satisfied regardless of whether both Parties place the offence within the same category of offences or denominate the offence by the same terminology, provided that both Parties criminalise the conduct underlying the offence.
- 2 Co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter, may also be refused if the measures sought could not be taken under the domestic law of the requested Party for the purposes of investigations or proceedings, had it been a similar domestic case.
- 3 Where the law of the requested Party so requires, co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter may also be refused if the measures sought or any other measures having similar effects would not be permitted under the law of the requesting Party, or, as regards the competent authorities of the requesting Party, if the request is not authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.
- 4 Co-operation under Section 4 of this chapter may also be refused if:
  - a under the law of the requested Party confiscation is not provided for in respect of the type of offence to which the request relates; or

- b without prejudice to the obligation pursuant to Article 23, paragraph 3, it would be contrary to the principles of the domestic law of the requested Party concerning the limits of confiscation in respect of the relationship between an offence and:
    - i an economic advantage that might be qualified as its proceeds; or
    - ii property that might be qualified as its instrumentalities; or
  - c under the law of the requested Party confiscation may no longer be imposed or enforced because of the lapse of time; or
  - d without prejudice to Article 23, paragraph 5, the request does not relate to a previous conviction, or a decision of a judicial nature or a statement in such a decision that an offence or several offences have been committed, on the basis of which the confiscation has been ordered or is sought; or
  - e confiscation is either not enforceable in the requesting Party, or it is still subject to ordinary means of appeal; or
  - f the request relates to a confiscation order resulting from a decision rendered *in absentia* of the person against whom the order was issued and, in the opinion of the requested Party, the proceedings conducted by the requesting Party leading to such decision did not satisfy the minimum rights of defence recognised as due to everyone against whom a criminal charge is made.
- 5 For the purpose of paragraph 4.f of this article a decision is not considered to have been rendered *in absentia* if:
- a it has been confirmed or pronounced after opposition by the person concerned; or
  - b it has been rendered on appeal, provided that the appeal was lodged by the person concerned.
- 6 When considering, for the purposes of paragraph 4.f of this article if the minimum rights of defence have been satisfied, the requested Party shall take into account the fact that the person concerned has deliberately sought to evade justice or the fact that that person, having had the possibility of lodging a legal remedy against the decision made *in absentia*, elected not to do so. The same will apply when the person concerned, having been duly served with the summons to appear, elected not to do so nor to ask for adjournment.
- 7 A Party shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for co-operation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

- 8 Without prejudice to the ground for refusal provided for in paragraph 1.a of this article:
- a the fact that the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is a legal person shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter;
  - b the fact that the natural person against whom an order of confiscation of proceeds has been issued has died or the fact that a legal person against whom an order of confiscation of proceeds has been issued has subsequently been dissolved shall not be invoked as an obstacle to render assistance in accordance with Article 23, paragraph 1.a.
  - c the fact that the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is mentioned in the request both as the author of the underlying criminal offence and of the offence of money laundering, in accordance with Article 9.2.b of this Convention, shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter.

#### **Article 29 – Postponement**

The requested Party may postpone action on a request if such action would prejudice investigations or proceedings by its authorities.

#### **Article 30 – Partial or conditional granting of a request**

Before refusing or postponing co-operation under this chapter, the requested Party shall, where appropriate after having consulted the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

### *Section 6 – Notification and protection of third parties' rights*

#### **Article 31 – Notification of documents**

- 1 The Parties shall afford each other the widest measure of mutual assistance in the serving of judicial documents to persons affected by provisional measures and confiscation.
- 2 Nothing in this article is intended to interfere with:
  - a the possibility of sending judicial documents, by postal channels, directly to persons abroad;
  - b the possibility for judicial officers, officials or other competent authorities of the Party of origin to effect service of judicial documents directly through the consular authorities of that Party or through judicial officers, officials or other competent authorities of the Party of destination,

unless the Party of destination makes a declaration to the contrary to the Secretary General of the Council of Europe at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

- 3 When serving judicial documents to persons abroad affected by provisional measures or confiscation orders issued in the sending Party, this Party shall indicate what legal remedies are available under its law to such persons.

#### **Article 32 – Recognition of foreign decisions**

- 1 When dealing with a request for co-operation under Sections 3 and 4, the requested Party shall recognise any judicial decision taken in the requesting Party regarding rights claimed by third parties.
- 2 Recognition may be refused if:
  - a third parties did not have adequate opportunity to assert their rights; or
  - b the decision is incompatible with a decision already taken in the requested Party on the same matter; or
  - c it is incompatible with the *ordre public* of the requested Party; or
  - d the decision was taken contrary to provisions on exclusive jurisdiction provided for by the law of the requested Party.

### *Section 7 – Procedural and other general rules*

#### **Article 33 – Central authority**

- 1 The Parties shall designate a central authority or, if necessary, authorities, which shall be responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution.
- 2 Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of paragraph 1 of this article.

#### **Article 34 – Direct communication**

- 1 The central authorities shall communicate directly with one another.
- 2 In the event of urgency, requests or communications under this chapter may be sent directly by the judicial authorities, including public prosecutors, of the requesting Party to such authorities of the requested Party. In such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.
- 3 Any request or communication under paragraphs 1 and 2 of this article may be made through the International Criminal Police Organisation (Interpol).

- 4 Where a request is made pursuant to paragraph 2 of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.
- 5 Requests or communications under Section 2 of this chapter, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.
- 6 Draft requests or communications under this chapter may be sent directly by the judicial authorities of the requesting Party to such authorities of the requested Party prior to a formal request to ensure that it can be dealt with efficiently upon receipt and contains sufficient information and supporting documentation for it to meet the requirements of the legislation of the requested Party.

#### **Article 35 – Form of request and languages**

- 1 All requests under this chapter shall be made in writing. They may be transmitted electronically, or by any other means of telecommunication, provided that the requesting Party is prepared, upon request, to produce at any time a written record of such communication and the original. However each Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, indicate the conditions in which it is ready to accept and execute requests received electronically or by any other means of communication.
- 2 Subject to the provisions of paragraph 3 of this article, translations of the requests or supporting documents shall not be required.
- 3 At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, any State or the European Community may communicate to the Secretary General of the Council of Europe a declaration that it reserves the right to require that requests made to it and documents supporting such requests be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language as it may specify. The other Parties may apply the reciprocity rule.

#### **Article 36 – Legalisation**

Documents transmitted in application of this chapter shall be exempt from all legalisation formalities.

#### **Article 37 – Content of request**

- 1 Any request for co-operation under this chapter shall specify:
  - a the authority making the request and the authority carrying out the investigations or proceedings;

- b the object of and the reason for the request;
  - c the matters, including the relevant facts (such as date, place and circumstances of the offence) to which the investigations or proceedings relate, except in the case of a request for notification;
  - d in so far as the co-operation involves coercive action:
    - i the text of the statutory provisions or, where this is not possible, a statement of the relevant law applicable; and
    - ii an indication that the measure sought or any other measures having similar effects could be taken in the territory of the requesting Party under its own law;
  - e where necessary and in so far as possible:
    - i details of the person or persons concerned, including name, date and place of birth, nationality and location, and, in the case of a legal person, its seat; and
    - ii the property in relation to which co-operation is sought, its location, its connection with the person or persons concerned, any connection with the offence, as well as any available information about other persons, interests in the property; and
  - f any particular procedure the requesting Party wishes to be followed.
- 2 A request for provisional measures under Section 3 in relation to seizure of property on which a confiscation order consisting in the requirement to pay a sum of money may be realised shall also indicate a maximum amount for which recovery is sought in that property.
- 3 In addition to the indications mentioned in paragraph 1, any request under Section 4 shall contain:
- a in the case of Article 23, paragraph 1.a:
    - i a certified true copy of the confiscation order made by the court in the requesting Party and a statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself;
    - ii an attestation by the competent authority of the requesting Party that the confiscation order is enforceable and not subject to ordinary means of appeal;
    - iii information as to the extent to which the enforcement of the order is requested; and
    - iv information as to the necessity of taking any provisional measures;
  - b in the case of Article 23, paragraph 1.b, a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;
- c when third parties have had the opportunity to claim rights, documents demonstrating that this has been the case.

#### **Article 38 – Defective requests**

- 1 If a request does not comply with the provisions of this chapter or the information supplied is not sufficient to enable the requested Party to deal with the request, that Party may ask the requesting Party to amend the request or to complete it with additional information.
- 2 The requested Party may set a time limit for the receipt of such amendments or information.
- 3 Pending receipt of the requested amendments or information in relation to a request under Section 4 of this chapter, the requested Party may take any of the measures referred to in Sections 2 or 3 of this chapter.

#### **Article 39 – Plurality of requests**

- 1 Where the requested Party receives more than one request under Sections 3 or 4 of this chapter in respect of the same person or property, the plurality of requests shall not prevent that Party from dealing with the requests involving the taking of provisional measures.
- 2 In the case of plurality of requests under Section 4 of this chapter, the requested Party shall consider consulting the requesting Parties.

#### **Article 40 – Obligation to give reasons**

The requested Party shall give reasons for any decision to refuse, postpone or make conditional any co-operation under this chapter.

#### **Article 41 – Information**

- 1 The requested Party shall promptly inform the requesting Party of:
  - a the action initiated on a request under this chapter;
  - b the final result of the action carried out on the basis of the request;
  - c a decision to refuse, postpone or make conditional, in whole or in part, any co-operation under this chapter;
  - d any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly; and
  - e in the event of provisional measures taken pursuant to a request under Sections 2 or 3 of this chapter, such provisions of its domestic law as would automatically lead to the lifting of the provisional measure.
- 2 The requesting Party shall promptly inform the requested Party of:
  - a any review, decision or any other fact by reason of which the confiscation order ceases to be wholly or partially enforceable; and
  - b any development, factual or legal, by reason of which any action under this chapter is no longer justified.



- 3 Where a Party, on the basis of the same confiscation order, requests confiscation in more than one Party, it shall inform all Parties which are affected by an enforcement of the order about the request.

#### **Article 42 – Restriction of use**

- 1 The requested Party may make the execution of a request dependent on the condition that the information or evidence obtained will not, without its prior consent, be used or transmitted by the authorities of the requesting Party for investigations or proceedings other than those specified in the request.
- 2 Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe, declare that, without its prior consent, information or evidence provided by it under this chapter may not be used or transmitted by the authorities of the requesting Party in investigations or proceedings other than those specified in the request.

#### **Article 43 – Confidentiality**

- 1 The requesting Party may require that the requested Party keep confidential the facts and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.
- 2 The requesting Party shall, if not contrary to basic principles of its national law and if so requested, keep confidential any evidence and information provided by the requested Party, except to the extent that its disclosure is necessary for the investigations or proceedings described in the request.
- 3 Subject to the provisions of its domestic law, a Party which has received spontaneous information under Article 20 shall comply with any requirement of confidentiality as required by the Party which supplies the information. If the other Party cannot comply with such requirement, it shall promptly inform the transmitting Party.

#### **Article 44 – Costs**

The ordinary costs of complying with a request shall be borne by the requested Party. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the Parties shall consult in order to agree the conditions on which the request is to be executed and how the costs shall be borne.

#### **Article 45 – Damages**

- 1 When legal action on liability for damages resulting from an act or omission in relation to co-operation under this chapter has been initiated by a

person, the Parties concerned shall consider consulting each other, where appropriate, to determine how to apportion any sum of damages due.

- 2 A Party which has become subject of a litigation for damages shall endeavour to inform the other Party of such litigation if that Party might have an interest in the case.

## **Chapter V – Co-operation between FIUs**

### **Article 46 – Co-operation between FIUs**

- 1 Parties shall ensure that FIUs, as defined in this Convention, shall co-operate for the purpose of combating money laundering, to assemble and analyse, or, if appropriate, investigate within the FIU relevant information on any fact which might be an indication of money laundering in accordance with their national powers.
- 2 For the purposes of paragraph 1, each Party shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Convention or in accordance with existing or future memoranda of understanding compatible with this Convention, any accessible information that may be relevant to the processing or analysis of information or, if appropriate, to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved.
- 3 Each Party shall ensure that the performance of the functions of the FIUs under this article shall not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities.
- 4 Each request made under this article shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. The FIU shall specify in the request how the information sought will be used.
- 5 When a request is made in accordance with this article, the requested FIU shall provide all relevant information, including accessible financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between the Parties.
- 6 An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Party or, in exceptional circumstances, where divulging the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Party concerned or would otherwise not be in accordance with fundamental principles of national law of the requested Party. Any such refusal shall be appropriately explained to the FIU requesting the information.
- 7 Information or documents obtained under this article shall only be used for the purposes laid down in paragraph 1. Information supplied by a counterpart FIU shall not be disseminated to a third party, nor be used by

the receiving FIU for purposes other than analysis, without prior consent of the supplying FIU.

- 8 When transmitting information or documents pursuant to this article, the transmitting FIU may impose restrictions and conditions on the use of information for purposes other than those stipulated in paragraph 7. The receiving FIU shall comply with any such restrictions and conditions.
- 9 Where a Party wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in paragraph 7, the transmitting FIU may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in paragraph 6. Any refusal to grant consent shall be appropriately explained.
- 10 FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this article is not accessible by any other authorities, agencies or departments.
- 11 The information submitted shall be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and taking account of Recommendation No. R(87)15 of 15 September 1987 of the Committee of Ministers of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU.
- 12 The transmitting FIU may make reasonable enquiries as to the use made of information provided and the receiving FIU shall, whenever practicable, provide such feedback.
- 13 Parties shall indicate the unit which is an FIU within the meaning of this article.

**Article 47 – International co-operation for postponement of suspicious transactions**

- 1 Each Party shall adopt such legislative or other measures as may be necessary to permit urgent action to be initiated by a FIU, at the request of a foreign FIU, to suspend or withhold consent to a transaction going ahead for such periods and depending on the same conditions as apply in its domestic law in respect of the postponement of transactions.
- 2 The action referred to in paragraph 1 shall be taken where the requested FIU is satisfied, upon justification by the requesting FIU, that:
  - a the transaction is related to money laundering; and
  - b the transaction would have been suspended, or consent to the transaction going ahead would have been withheld, if the transaction had been the subject of a domestic suspicious transaction report.

## **Chapter VI – Monitoring mechanism and settlement of disputes**

### **Article 48 – Monitoring mechanism and settlement of disputes**

- 1 The Conference of the Parties (COP) shall be responsible for following the implementation of the Convention. The COP:
  - a shall monitor the proper implementation of the Convention by the Parties;
  - b shall, at the request of a Party, express an opinion on any question concerning the interpretation and application of the Convention.
- 2 The COP shall carry out the functions under paragraph 1.a above by using any available Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (Moneyval) public summaries (for Moneyval countries) and any available FATF public summaries (for FATF countries), supplemented by periodic self assessment questionnaires, as appropriate. The monitoring procedure will deal with areas covered by this Convention only in respect of those areas which are not covered by other relevant international standards on which mutual evaluations are carried out by the FATF and Moneyval.
- 3 If the COP concludes that it requires further information in the discharge of its functions, it shall liaise with the Party concerned, taking advantage, if so required by the COP, of the procedure and mechanism of Moneyval. The Party concerned shall then report back to the COP. The COP shall on this basis decide whether or not to carry out a more in-depth assessment of the position of the Party concerned. This may, but need not necessarily, involve, a country visit by an evaluation team.
- 4 In case of a dispute between Parties as to the interpretation or application of the Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the COP, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.
- 5 The COP shall adopt its own rules of procedure.
- 6 The Secretary General of the Council of Europe shall convene the COP not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the COP shall be held in accordance with the rules of procedure adopted by the COP.

## **Chapter VII – Final provisions**

### **Article 49 – Signature and entry into force**

- 1 The Convention shall be open for signature by the member States of the Council of Europe, the European Community and non-member States which have participated in its elaboration. Such States or the European Community may express their consent to be bound by:

- a signature without reservation as to ratification, acceptance or approval; or
  - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
  - 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 6 signatories, of which at least four are member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
  - 4 In respect of any Signatory which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Convention in accordance with the provisions of paragraph 1.
  - 5 No Party to the 1990 Convention may ratify, accept or approve this Convention without considering itself bound by at least the provisions corresponding to the provisions of the 1990 Convention to which it is bound.
  - 6 As from its entry into force, Parties to this Convention, which are at the same time Parties to the 1990 Convention:
    - a shall apply the provisions of this Convention in their mutual relationships;
    - b shall continue to apply the provisions of the 1990 Convention in their relations with other Parties to the said Convention, but not to the present Convention.

#### **Article 50 – Accession to the Convention**

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Parties to the Convention, may invite any State not a member of the Council and not having participated in its elaboration to accede to this Convention, by a decision taken by the majority provided for in Article 20.d. of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Parties entitled to sit on the Committee.
- 2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### **Article 51 – Territorial application**

- 1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or

accession, specify the territory or territories to which the Convention shall apply.

- 2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of the Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 52 – Relationship to other conventions and agreements**

- 1 This Convention does not affect the rights and undertakings of Parties derived from international multilateral instruments concerning special matters.
- 2 The Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for the purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
- 3 If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate these relations accordingly, in lieu of the Convention, if it facilitates international co-operation.
- 4 Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.

#### **Article 53 – Declarations and reservations**

- 1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more of the declaration provided for in Article 3, paragraph 2, Article 9, paragraph 4, Article 17, paragraph 5, Article 24, paragraph 3, Article 31, paragraph 2, Article 35, paragraphs 1 and 3 and Article 42, paragraph 2.

- 2 Any State or the European Community may also, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General, reserve its right not to apply, in part or in whole, the provisions of Article 7, paragraph 2, sub-paragraph c; Article 9, paragraph 6; Article 46, paragraph 5; and Article 47.
- 3 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare the manner in which it intends to apply Articles 17 and 19 of this Convention, particularly taking into account applicable international agreements in the field of international co-operation in criminal matters. It shall notify any changes in this information to the Secretary General of the Council of Europe.
- 4 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare:
  - a that it will not apply Article 3, paragraph 4 of this Convention; or
  - b that it will apply Article 3, paragraph 4 of this Convention only partly; or
  - c the manner in which it intends to apply Article 3, paragraph 4 of this Convention.It shall notify any changes in this information to the Secretary General of the Council of Europe.
- 5 No other reservation may be made.
- 6 Any Party which has made a reservation under this article may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.
- 7 A Party which has made a reservation in respect of a provision of the Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

#### **Article 54 – Amendments**

- 1 Amendments to the Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe, to the European Community and to every non-member State which has acceded to or has been invited to accede to this Convention in accordance with the provisions of Article 50.
- 2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC) which shall submit to the Committee of Ministers its opinion on that proposed amendment.

- 3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDPC and may adopt the amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe.
- 4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
- 5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.
- 6 In order to update the categories of offences contained in the appendix, as well as amend Article 13, amendments may be proposed by any Party or by the Committee of Ministers. They shall be communicated by the Secretary General of the Council of Europe to the Parties.
- 7 After having consulted the Parties which are not members of the Council of Europe and, if necessary the CDPC, the Committee of Ministers may adopt an amendment proposed in accordance with paragraph 6 by the majority provided for in Article 20.d of the Statute of the Council of Europe. The amendment shall enter into force following the expiry of a period of one year after the date on which it has been forwarded to the Parties. During this period, any Party may notify the Secretary General of any objection to the entry into force of the amendment in its respect.
- 8 If one-third of the Parties notifies the Secretary General of an objection to the entry into force of the amendment, the amendment shall not enter into force.
- 9 If less than one-third of the Parties notifies an objection, the amendment shall enter into force for those Parties which have not notified an objection.
- 10 Once an amendment has entered into force in accordance with paragraphs 6 to 9 of this article and a Party has notified an objection to it, this amendment shall come into force in respect of the Party concerned on the first day of the month following the date on which it has notified the Secretary General of the Council of Europe of its acceptance. A Party which has made an objection may withdraw it at any time by notifying it to the Secretary General of the Council of Europe.
- 11 If an amendment has been adopted by the Committee of Ministers, a State or the European Community may not express their consent to be bound by the Convention, without accepting at the same time the amendment.

#### **Article 55 – Denunciation**

- 1 Any Party may, at any time, denounce the Convention by means of a notification addressed to the Secretary General of the Council of Europe.



- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.
- 3 The present Convention shall, however, continue to apply to the enforcement under Article 23 of confiscation for which a request has been made in conformity with the provisions of the Convention before the date on which such a denunciation takes effect.

#### **Article 56 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the European Community, the non-member States which have participated in the elaboration of the Convention, any State invited to accede to it and any other Party to the Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of the Convention in accordance with Articles 49 and 50;
- d any declaration or reservation made under Article 53;
- e any other act, notification or communication relating to the Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at [Warsaw], this [16th] day of [May 2005], in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the European Community, to the non-member States which have participated in the elaboration of the Convention and to any State invited to accede to it.

#### **Appendix**

- a participation in an organised criminal group and racketeering;
- b terrorism, including financing of terrorism;
- c trafficking in human beings and migrant smuggling;
- d sexual exploitation, including sexual exploitation of children;
- e illicit trafficking in narcotic drugs and psychotropic substances;
- f illicit arms trafficking;

g illicit trafficking in stolen and other goods;  
h corruption and bribery;  
i fraud;  
j counterfeiting currency;  
k counterfeiting and piracy of products;  
l environmental crime;  
m murder, grievous bodily injury;  
n kidnapping, illegal restraint and hostage-taking;  
o robbery or theft;  
p smuggling;  
q extortion;  
r forgery;  
s piracy; and  
t insider trading and market manipulation.

## **Criminal Law Convention on Corruption**

Strasbourg, 27.I.1999, ETS No. 173

### **Preamble**

The member States of the Council of Europe and the other States signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recognising the value of fostering co-operation with the other States signatories to this Convention;

Convinced of the need to pursue, as a matter of priority, a common criminal policy aimed at the protection of society against corruption, including the adoption of appropriate legislation and preventive measures;

Emphasising that corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society;

Believing that an effective fight against corruption requires increased, rapid and well-functioning international co-operation in criminal matters;

Welcoming recent developments which further advance international understanding and co-operation in combating corruption, including actions of the United Nations, the World Bank, the International Monetary Fund, the World Trade Organisation, the Organisation of American States, the OECD and the European Union;

Having regard to the Programme of Action against Corruption adopted by the Committee of Ministers of the Council of Europe in November 1996 following the recommendations of the 19th Conference of European Ministers of Justice (Valletta, 1994);

Recalling in this respect the importance of the participation of non-member States in the Council of Europe's activities against corruption and welcoming their valuable contribution to the implementation of the Programme of Action against Corruption;

Further recalling that Resolution No. 1 adopted by the European Ministers of Justice at their 21st Conference (Prague, 1997) recommended the speedy implementation of the Programme of Action against Corruption, and called, in particular, for the early adoption of a criminal law convention

providing for the co-ordinated incrimination of corruption offences, enhanced co-operation for the prosecution of such offences as well as an effective follow-up mechanism open to member States and non-member States on an equal footing;

Bearing in mind that the Heads of State and Government of the Council of Europe decided, on the occasion of their Second Summit held in Strasbourg on 10 and 11 October 1997, to seek common responses to the challenges posed by the growth in corruption and adopted an Action Plan which, in order to promote co-operation in the fight against corruption, including its links with organised crime and money laundering, instructed the Committee of Ministers, *inter alia*, to secure the rapid completion of international legal instruments pursuant to the Programme of Action against Corruption;

Considering moreover that Resolution (97) 24 on the 20 Guiding Principles for the Fight against Corruption, adopted on 6 November 1997 by the Committee of Ministers at its 101st Session, stresses the need rapidly to complete the elaboration of international legal instruments pursuant to the Programme of Action against Corruption;

In view of the adoption by the Committee of Ministers, at its 102nd Session on 4 May 1998, of Resolution (98) 7 authorising the partial and enlarged agreement establishing the "Group of States against Corruption – GRECO", which aims at improving the capacity of its members to fight corruption by following up compliance with their undertakings in this field,

Have agreed as follows:

## **Chapter I – Use of terms**

### **Article 1 – Use of terms**

For the purposes of this Convention:

- a "public official" shall be understood by reference to the definition of "official", "public officer", "mayor", "minister" or "judge" in the national law of the State in which the person in question performs that function and as applied in its criminal law;
- b the term "judge" referred to in sub-paragraph a above shall include prosecutors and holders of judicial offices;
- c in the case of proceedings involving a public official of another State, the prosecuting State may apply the definition of public official only insofar as that definition is compatible with its national law;
- d "legal person" shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organisations.

## **Chapter II – Measures to be taken at national level**

### **Article 2 – Active bribery of domestic public officials**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.

### **Article 3 – Passive bribery of domestic public officials**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

### **Article 4 – Bribery of members of domestic public assemblies**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any domestic public assembly exercising legislative or administrative powers.

### **Article 5 – Bribery of foreign public officials**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving a public official of any other State.

### **Article 6 – Bribery of members of foreign public assemblies**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any public assembly exercising legislative or administrative powers in any other State.

### **Article 7 – Active bribery in the private sector**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for

themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.

#### **Article 8 – Passive bribery in the private sector**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.

#### **Article 9 – Bribery of officials of international organisations**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any official or other contracted employee, within the meaning of the staff regulations, of any public international or supranational organisation or body of which the Party is a member, and any person, whether seconded or not, carrying out functions corresponding to those performed by such officials or agents.

#### **Article 10 – Bribery of members of international parliamentary assemblies**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Article 4 when involving any members of parliamentary assemblies of international or supranational organisations of which the Party is a member.

#### **Article 11 – Bribery of judges and officials of international courts**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3 involving any holders of judicial office or officials of any international court whose jurisdiction is accepted by the Party.

#### **Article 12 – Trading in influence**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration

thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

#### **Article 13 – Money laundering of proceeds from corruption offences**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime (ETS No. 141), Article 6, paragraphs 1 and 2, under the conditions referred to therein, when the predicate offence consists of any of the criminal offences established in accordance with Articles 2 to 12 of this Convention, to the extent that the Party has not made a reservation or a declaration with respect to these offences or does not consider such offences as serious ones for the purpose of their money laundering legislation.

#### **Article 14 – Account offences**

Each Party shall adopt such legislative and other measures as may be necessary to establish as offences liable to criminal or other sanctions under its domestic law the following acts or omissions, when committed intentionally, in order to commit, conceal or disguise the offences referred to in Articles 2 to 12, to the extent the Party has not made a reservation or a declaration:

- a creating or using an invoice or any other accounting document or record containing false or incomplete information;
- b unlawfully omitting to make a record of a payment.

#### **Article 15 – Participatory acts**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law aiding or abetting the commission of any of the criminal offences established in accordance with this Convention.

#### **Article 16 – Immunity**

The provisions of this Convention shall be without prejudice to the provisions of any Treaty, Protocol or Statute, as well as their implementing texts, as regards the withdrawal of immunity.

#### **Article 17 – Jurisdiction**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with Articles 2 to 14 of this Convention where:

- a the offence is committed in whole or in part in its territory;
  - b the offender is one of its nationals, one of its public officials, or a member of one of its domestic public assemblies;
  - c the offence involves one of its public officials or members of its domestic public assemblies or any person referred to in Articles 9 to 11 who is at the same time one of its nationals.
- 2 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 b and c of this article or any part thereof.
  - 3 If a Party has made use of the reservation possibility provided for in paragraph 2 of this article, it shall adopt such measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with this Convention, in cases where an alleged offender is present in its territory and it does not extradite him to another Party, solely on the basis of his nationality, after a request for extradition.
  - 4 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with national law.

#### **Article 18 – Corporate liability**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of active bribery, trading in influence and money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
  - a power of representation of the legal person; or
  - an authority to take decisions on behalf of the legal person; or
  - an authority to exercise control within the legal person;as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.
- 2 Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.



- 3 Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to, the criminal offences mentioned in paragraph 1.

#### **Article 19 – Sanctions and measures**

- 1 Having regard to the serious nature of the criminal offences established in accordance with this Convention, each Party shall provide, in respect of those criminal offences established in accordance with Articles 2 to 14, effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.
- 2 Each Party shall ensure that legal persons held liable in accordance with Article 18, paragraphs 1 and 2, shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.
- 3 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with this Convention, or property the value of which corresponds to such proceeds.

#### **Article 20 – Specialised authorities**

Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.

#### **Article 21 – Co-operation with and between national authorities**

Each Party shall adopt such measures as may be necessary to ensure that public authorities, as well as any public official, co-operate, in accordance with national law, with those of its authorities responsible for investigating and prosecuting criminal offences:

- a by informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the criminal offences established in accordance with Articles 2 to 14 has been committed, or
- b by providing, upon request, to the latter authorities all necessary information.

#### **Article 22 – Protection of collaborators of justice and witnesses**

Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for:

- a those who report the criminal offences established in accordance with Articles 2 to 14 or otherwise co-operate with the investigating or prosecuting authorities;
- b witnesses who give testimony concerning these offences.

#### **Article 23 – Measures to facilitate the gathering of evidence and the confiscation of proceeds**

- 1 Each Party shall adopt such legislative and other measures as may be necessary, including those permitting the use of special investigative techniques, in accordance with national law, to enable it to facilitate the gathering of evidence related to criminal offences established in accordance with Article 2 to 14 of this Convention and to identify, trace, freeze and seize instrumentalities and proceeds of corruption, or property the value of which corresponds to such proceeds, liable to measures set out in accordance with paragraph 3 of Article 19 of this Convention.
- 2 Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in paragraph 1 of this article.
- 3 Bank secrecy shall not be an obstacle to measures provided for in paragraphs 1 and 2 of this article.

### **Chapter III – Monitoring of implementation**

#### **Article 24 – Monitoring**

The Group of States against Corruption (GRECO) shall monitor the implementation of this Convention by the Parties.

### **Chapter IV – International co-operation**

#### **Article 25 – General principles and measures for international co-operation**

- 1 The Parties shall co-operate with each other, in accordance with the provisions of relevant international instruments on international co-operation in criminal matters, or arrangements agreed on the basis of uniform or reciprocal legislation, and in accordance with their national law, to the widest extent possible for the purposes of investigations and proceedings concerning criminal offences established in accordance with this Convention.
- 2 Where no international instrument or arrangement referred to in paragraph 1 is in force between Parties, Articles 26 to 31 of this chapter shall apply.

- 3 Articles 26 to 31 of this chapter shall also apply where they are more favourable than those of the international instruments or arrangements referred to in paragraph 1.

#### **Article 26 – Mutual assistance**

- 1 The Parties shall afford one another the widest measure of mutual assistance by promptly processing requests from authorities that, in conformity with their domestic laws, have the power to investigate or prosecute criminal offences established in accordance with this Convention.
- 2 Mutual legal assistance under paragraph 1 of this article may be refused if the requested Party believes that compliance with the request would undermine its fundamental interests, national sovereignty, national security or *ordre public*.
- 3 Parties shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for co-operation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

#### **Article 27 – Extradition**

- 1 The criminal offences established in accordance with this Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.
- 2 If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence established in accordance with this Convention.
- 3 Parties that do not make extradition conditional on the existence of a treaty shall recognise criminal offences established in accordance with this Convention as extraditable offences between themselves.
- 4 Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.
- 5 If extradition for a criminal offence established in accordance with this Convention is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with

the requesting Party, and shall report the final outcome to the requesting Party in due course.

#### **Article 28 – Spontaneous information**

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on facts when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request by that Party under this chapter.

#### **Article 29 – Central authority**

- 1 The Parties shall designate a central authority or, if appropriate, several central authorities, which shall be responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution.
- 2 Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of paragraph 1 of this article.

#### **Article 30 – Direct communication**

- 1 The central authorities shall communicate directly with one another.
- 2 In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by the judicial authorities, including public prosecutors, of the requesting Party to such authorities of the requested Party. In such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.
- 3 Any request or communication under paragraphs 1 and 2 of this article may be made through the International Criminal Police Organisation (Interpol).
- 4 Where a request is made pursuant to paragraph 2 of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.
- 5 Requests or communications under paragraph 2 of this article, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.
- 6 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the

Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this chapter are to be addressed to its central authority.

#### **Article 31 – Information**

The requested Party shall promptly inform the requesting Party of the action taken on a request under this chapter and the final result of that action. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.

### **Chapter V – Final provisions**

#### **Article 32 – Signature and entry into force**

- 1 This Convention shall be open for signature by the member States of the Council of Europe and by non-member States which have participated in its elaboration. Such States may express their consent to be bound by:
  - a signature without reservation as to ratification, acceptance or approval; or
  - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which fourteenth States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1. Any such State, which is not a member of the Group of States against Corruption (GRECO) at the time of ratification, shall automatically become a member on the date the Convention enters into force.
- 4 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of their consent to be bound by the Convention in accordance with the provisions of paragraph 1. Any signatory State, which is not a member of the Group of States against Corruption (GRECO) at the time of ratification, shall automatically become a member on the date the Convention enters into force in its respect.

#### **Article 33 – Accession to the Convention**

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States to the Convention, may invite the European Community as well as any State

not a member of the Council and not having participated in its elaboration to accede to this Convention, by a decision taken by the majority provided for in Article 20d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

- 2 In respect of the European Community and any State acceding to it under paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe. The European Community and any State acceding to this Convention shall automatically become a member of GRECO, if it is not already a member at the time of accession, on the date the Convention enters into force in its respect.

#### **Article 34 – Territorial application**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 35 – Relationship to other conventions and agreements**

- 1 This Convention does not affect the rights and undertakings derived from international multilateral conventions concerning special matters.
- 2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
- 3 If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate those relations

accordingly, in lieu of the present Convention, if it facilitates international co-operation.

#### **Article 36 – Declarations**

Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it will establish as criminal offences the active and passive bribery of foreign public officials under Article 5, of officials of international organisations under Article 9 or of judges and officials of international courts under Article 11, only to the extent that the public official or judge acts or refrains from acting in breach of his duties.

#### **Article 37 – Reservations**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, reserve its right not to establish as a criminal offence under its domestic law, in part or in whole, the conduct referred to in Articles 4, 6 to 8, 10 and 12 or the passive bribery offences defined in Article 5.
- 2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession declare that it avails itself of the reservation provided for in Article 17, paragraph 2.
- 3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession declare that it may refuse mutual legal assistance under Article 26, paragraph 1, if the request concerns an offence which the requested Party considers a political offence.
- 4 No State may, by application of paragraphs 1, 2 and 3 of this article, enter reservations to more than five of the provisions mentioned thereon. No other reservation may be made. Reservations of the same nature with respect to Articles 4, 6 and 10 shall be considered as one reservation.

#### **Article 38 – Validity and review of declarations and reservations**

- 1 Declarations referred to in Article 36 and reservations referred to in Article 37 shall be valid for a period of three years from the day of the entry into force of this Convention in respect of the State concerned. However, such declarations and reservations may be renewed for periods of the same duration.
- 2 Twelve months before the date of expiry of the declaration or reservation, the Secretariat General of the Council of Europe shall give notice of that expiry to the State concerned. No later than three months before the expiry, the State shall notify the Secretary General that it is upholding, amending or withdrawing its declaration or reservation. In the absence of a notification by the State concerned, the Secretariat General shall inform that State that its declaration or reservation is considered to have been

extended automatically for a period of six months. Failure by the State concerned to notify its intention to uphold or modify its declaration or reservation before the expiry of that period shall cause the declaration or reservation to lapse.

- 3 If a Party makes a declaration or a reservation in conformity with Articles 36 and 37, it shall provide, before its renewal or upon request, an explanation to GRECO, on the grounds justifying its continuance.

#### **Article 39 – Amendments**

- 1 Amendments to this Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe and to every non-member State which has acceded to, or has been invited to accede to, this Convention in accordance with the provisions of Article 33.
- 2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC), which shall submit to the Committee of Ministers its opinion on that proposed amendment.
- 3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDPC and, following consultation of the non-member States Parties to this Convention, may adopt the amendment.
- 4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
- 5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

#### **Article 40 – Settlement of disputes**

- 1 The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the interpretation and application of this Convention.
- 2 In case of a dispute between Parties as to the interpretation or application of this Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the European Committee on Crime Problems, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.

#### **Article 41 – Denunciation**

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.



- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

#### **Article 42 – Notification**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 32 and 33;
- d any declaration or reservation made under Article 36 or Article 37;
- e any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 27th day of January 1999, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to it.



## **Additional Protocol to the Criminal Law Convention on Corruption**

Strasbourg, 15.V.2003, ETS No. 191

The member States of the Council of Europe and the other States signatory hereto,

Considering that it is desirable to supplement the Criminal Law Convention on Corruption (ETS No. 173, hereafter "the Convention") in order to prevent and fight against corruption;

Considering also that the present Protocol will allow the broader implementation of the 1996 Programme of Action against Corruption,

Have agreed as follows:

### **Chapter I – Use of terms**

#### **Article 1 – use of terms**

For the purpose of this Protocol:

- 1 The term "arbitrator" shall be understood by reference to the national law of the States Parties to this Protocol, but shall in any case include a person who by virtue of an arbitration agreement is called upon to render a legally binding decision in a dispute submitted to him/her by the parties to the agreement.
- 2 The term "arbitration agreement" means an agreement recognised by the national law whereby the parties agree to submit a dispute for a decision by an arbitrator.
- 3 The term "juror" shall be understood by reference to the national law of the States Parties to this Protocol but shall in any case include a lay person acting as a member of a collegial body which has the responsibility of deciding on the guilt of an accused person in the framework of a trial.
- 4 In the case of proceedings involving a foreign arbitrator or juror, the prosecuting State may apply the definition of arbitrator or juror only in so far as that definition is compatible with its national law.

### **Chapter II – Measures to be taken at national level**

#### **Article 2 – Active bribery of domestic arbitrators**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when

committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to an arbitrator exercising his/her functions under the national law on arbitration of the Party, for himself or herself or for anyone else, for him or for her to act or refrain from acting in the exercise of his or her functions.

#### **Article 3 – Passive bribery of domestic arbitrators**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by an arbitrator exercising his/her functions under the national law on arbitration of the Party, directly or indirectly, of any undue advantage for himself or herself or for anyone else, or the acceptance of an offer or promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

#### **Article 4 – Bribery of foreign arbitrators**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving an arbitrator exercising his/her functions under the national law on arbitration of any other State.

#### **Article 5 – Bribery of domestic jurors**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person acting as a juror within its judicial system.

#### **Article 6 – Bribery of foreign jurors**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person acting as a juror within the judicial system of any other State.

### **Chapter III – Monitoring of implementation and final provisions**

#### **Article 7 – Monitoring of implementation**

The Group of States against Corruption (GRECO) shall monitor the implementation of this Protocol by the Parties.

#### **Article 8 – Relationship to the Convention**

- 1 As between the States Parties the provisions of Articles 2 to 6 of this Protocol shall be regarded as additional articles to the Convention.

- 2 The provisions of the Convention shall apply to the extent that they are compatible with the provisions of this Protocol.

#### **Article 9 – Declarations and reservations**

- 1 If a Party has made a declaration in accordance with Article 36 of the Convention, it may make a similar declaration relating to Articles 4 and 6 of this Protocol at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.
- 2 If a Party has made a reservation in accordance with Article 37, paragraph 1, of the Convention restricting the application of the passive bribery offences defined in Article 5 of the Convention, it may make a similar reservation concerning Articles 4 and 6 of this Protocol at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. Any other reservation made by a Party, in accordance with Article 37 of the Convention shall be applicable also to this Protocol, unless that Party otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.
- 3 No other reservation may be made.

#### **Article 10 – Signature and entry into force**

- 1 This Protocol shall be open for signature by States which have signed the Convention. These States may express their consent to be bound by:
  - a signature without reservation as to ratification, acceptance or approval; or
  - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Protocol shall enter into force on the first day of the month following the expiry of a period of three months after the date on which five States have expressed their consent to be bound by the Protocol in accordance with the provisions of paragraphs 1 and 2, and only after the Convention itself has entered into force.
- 4 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiry of a period of three months after the date of the expression of its consent to be bound by the Protocol in accordance with the provisions of paragraphs 1 and 2.
- 5 A signatory State may not ratify, accept or approve this Protocol without having, simultaneously or previously, expressed its consent to be bound by the Convention.

#### **Article 11 – Accession to the Protocol**

- 1 Any State or the European Community having acceded to the Convention may accede to this Protocol after it has entered into force.
- 2 In respect of any State or the European Community acceding to the Protocol, it shall enter into force on the first day of the month following the expiry of a period of three months after the date of the deposit of an instrument of accession with the Secretary General of the Council of Europe.

#### **Article 12 – Territorial application**

- 1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
- 2 Any Party may, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiry of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made in pursuance of the two preceding paragraphs may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall become effective on the first day of the month following the expiry of a period of three months after the date of receipt of the notification by the Secretary General.

#### **Article 13 – Denunciation**

- 1 Any Party may, at any time, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiry of a period of three months after the date of receipt of the notification by the Secretary General.
- 3 Denunciation of the Convention automatically entails denunciation of this Protocol.

#### **Article 14 – Notification**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State, or the European Community, having acceded to this Protocol of:

- a any signature of this Protocol;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles 10, 11 and 12;
- d any declaration or reservation made under Articles 9 and 12;
- e any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 15th day of May 2003, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding Parties.





## Convention on Cybercrime

Budapest, 23.XI.2001, ETS No. 185

### Preamble

The member States of the Council of Europe and the other States signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recognising the value of fostering co-operation with the other States parties to this Convention;

Convinced of the need to pursue, as a matter of priority, a common criminal policy aimed at the protection of society against cybercrime, *inter alia*, by adopting appropriate legislation and fostering international co-operation;

Conscious of the profound changes brought about by the digitalisation, convergence and continuing globalisation of computer networks;

Concerned by the risk that computer networks and electronic information may also be used for committing criminal offences and that evidence relating to such offences may be stored and transferred by these networks;

Recognising the need for co-operation between States and private industry in combating cybercrime and the need to protect legitimate interests in the use and development of information technologies;

Believing that an effective fight against cybercrime requires increased, rapid and well-functioning international co-operation in criminal matters;

Convinced that the present Convention is necessary to deter action directed against the confidentiality, integrity and availability of computer systems, networks and computer data as well as the misuse of such systems, networks and data by providing for the criminalisation of such conduct, as described in this Convention, and the adoption of powers sufficient for effectively combating such criminal offences, by facilitating their detection, investigation and prosecution at both the domestic and international levels and by providing arrangements for fast and reliable international co-operation;

Mindful of the need to ensure a proper balance between the interests of law enforcement and respect for fundamental human rights as enshrined

in the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights and other applicable international human rights treaties, which reaffirm the right of everyone to hold opinions without interference, as well as the right to freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, and the rights concerning the respect for privacy;

Mindful also of the right to the protection of personal data, as conferred, for example, by the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data;

Considering the 1989 United Nations Convention on the Rights of the Child and the 1999 International Labour Organization Worst Forms of Child Labour Convention;

Taking into account the existing Council of Europe conventions on co-operation in the penal field, as well as similar treaties which exist between Council of Europe member States and other States, and stressing that the present Convention is intended to supplement those conventions in order to make criminal investigations and proceedings concerning criminal offences related to computer systems and data more effective and to enable the collection of evidence in electronic form of a criminal offence;

Welcoming recent developments which further advance international understanding and co-operation in combating cybercrime, including action taken by the United Nations, the OECD, the European Union and the G8;

Recalling Committee of Ministers Recommendations No. R (85) 10 concerning the practical application of the European Convention on Mutual Assistance in Criminal Matters in respect of letters rogatory for the interception of telecommunications, No. R (88) 2 on piracy in the field of copyright and neighbouring rights, No. R (87) 15 regulating the use of personal data in the police sector, No. R (95) 4 on the protection of personal data in the area of telecommunication services, with particular reference to telephone services, as well as No. R (89) 9 on computer-related crime providing guidelines for national legislatures concerning the definition of certain computer crimes and No. R (95) 13 concerning problems of criminal procedural law connected with information technology;

Having regard to Resolution No. 1 adopted by the European Ministers of Justice at their 21st Conference (Prague, 10 and 11 June 1997), which recommended that the Committee of Ministers support the work on cybercrime carried out by the European Committee on Crime Problems (CDPC) in order to bring domestic criminal law provisions closer to each other and enable the use of effective means of investigation into such offences, as well as to Resolution No. 3 adopted at the 23rd Conference of the European Ministers of Justice (London, 8 and 9 June 2000), which

encouraged the negotiating parties to pursue their efforts with a view to finding appropriate solutions to enable the largest possible number of States to become parties to the Convention and acknowledged the need for a swift and efficient system of international co-operation, which duly takes into account the specific requirements of the fight against cybercrime;

Having also regard to the Action Plan adopted by the Heads of State and Government of the Council of Europe on the occasion of their Second Summit (Strasbourg, 10 and 11 October 1997), to seek common responses to the development of the new information technologies based on the standards and values of the Council of Europe;

Have agreed as follows:

## **Chapter I – Use of terms**

### **Article 1 – Definitions**

For the purposes of this Convention:

- a "computer system" means any device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;
- b "computer data" means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;
- c "service provider" means:
  - i any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and
  - ii any other entity that processes or stores computer data on behalf of such communication service or users of such service;
- d "traffic data" means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication's origin, destination, route, time, date, size, duration, or type of underlying service.

## **Chapter II – Measures to be taken at the national level**

### *Section 1 – Substantive criminal law*

*Title 1 – Offences against the confidentiality, integrity and availability of computer data and systems*

#### **Article 2 – Illegal access**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when

committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.

### **Article 3 – Illegal interception**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.

### **Article 4 – Data interference**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.
- 2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.

### **Article 5 – System interference**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.

### **Article 6 – Misuse of devices**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right:
  - a the production, sale, procurement for use, import, distribution or otherwise making available of:
    - i a device, including a computer program, designed or adapted primarily for the purpose of committing any of the offences established in accordance with the above Articles 2 through 5;
    - ii a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed,with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5; and

- b the possession of an item referred to in paragraphs a.i or ii above, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5. A Party may require by law that a number of such items be possessed before criminal liability attaches.
- 2 This article shall not be interpreted as imposing criminal liability where the production, sale, procurement for use, import, distribution or otherwise making available or possession referred to in paragraph 1 of this article is not for the purpose of committing an offence established in accordance with Articles 2 through 5 of this Convention, such as for the authorised testing or protection of a computer system.
  - 3 Each Party may reserve the right not to apply paragraph 1 of this article, provided that the reservation does not concern the sale, distribution or otherwise making available of the items referred to in paragraph 1 a.ii of this article.

#### *Title 2 – Computer-related offences*

##### **Article 7 – Computer-related forgery**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.

##### **Article 8 – Computer-related fraud**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:

- a any input, alteration, deletion or suppression of computer data;
  - b any interference with the functioning of a computer system,
- with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.

#### *Title 3 – Content-related offences*

##### **Article 9 – Offences related to child pornography**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

- a producing child pornography for the purpose of its distribution through a computer system;
  - b offering or making available child pornography through a computer system;
  - c distributing or transmitting child pornography through a computer system;
  - d procuring child pornography through a computer system for oneself or for another person;
  - e possessing child pornography in a computer system or on a computer-data storage medium.
- 2 For the purpose of paragraph 1 above, the term “child pornography” shall include pornographic material that visually depicts:
- a a minor engaged in sexually explicit conduct;
  - b a person appearing to be a minor engaged in sexually explicit conduct;
  - c realistic images representing a minor engaged in sexually explicit conduct.
- 3 For the purpose of paragraph 2 above, the term “minor” shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.
- 4 Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c.

*Title 4 – Offences related to infringements of copyright and related rights*

**Article 10 – Offences related to infringements of copyright and related rights**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright, as defined under the law of that Party, pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.
- 2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of related rights, as defined under the law of that Party, pursuant to the obligations it has undertaken under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement on

Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.

- 3 A Party may reserve the right not to impose criminal liability under paragraphs 1 and 2 of this article in limited circumstances, provided that other effective remedies are available and that such reservation does not derogate from the Party's international obligations set forth in the international instruments referred to in paragraphs 1 and 2 of this article.

#### *Title 5 – Ancillary liability and sanctions*

##### **Article 11 – Attempt and aiding or abetting**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 2 through 10 of the present Convention with intent that such offence be committed.
- 2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, an attempt to commit any of the offences established in accordance with Articles 3 through 5, 7, 8, and 9.1.a and c. of this Convention.
- 3 Each Party may reserve the right not to apply, in whole or in part, paragraph 2 of this article.

##### **Article 12 – Corporate liability**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for a criminal offence established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within it, based on:
  - a a power of representation of the legal person;
  - b an authority to take decisions on behalf of the legal person;
  - c an authority to exercise control within the legal person.
- 2 In addition to the cases already provided for in paragraph 1 of this article, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

- 3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.
- 4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

#### **Article 13 – Sanctions and measures**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 2 through 11 are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty.
- 2 Each Party shall ensure that legal persons held liable in accordance with Article 12 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.

### *Section 2 – Procedural law*

#### *Title 1 – Common provisions*

#### **Article 14 – Scope of procedural provisions**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish the powers and procedures provided for in this section for the purpose of specific criminal investigations or proceedings.
- 2 Except as specifically provided otherwise in Article 21, each Party shall apply the powers and procedures referred to in paragraph 1 of this article to:
  - a the criminal offences established in accordance with Articles 2 through 11 of this Convention;
  - b other criminal offences committed by means of a computer system; and
  - c the collection of evidence in electronic form of a criminal offence.
- 3
  - a Each Party may reserve the right to apply the measures referred to in Article 20 only to offences or categories of offences specified in the reservation, provided that the range of such offences or categories of offences is not more restricted than the range of offences to which it applies the measures referred to in Article 21. Each Party shall consider restricting such a reservation to enable the broadest application of the measure referred to in Article 20.
  - b Where a Party, due to limitations in its legislation in force at the time of the adoption of the present Convention, is not able to apply the measures referred to in Articles 20 and 21 to communications being transmitted within a computer system of a service provider, which system:
    - i is being operated for the benefit of a closed group of users, and
    - ii does not employ public communications networks and is not connected with another computer system, whether public or private,



that Party may reserve the right not to apply these measures to such communications. Each Party shall consider restricting such a reservation to enable the broadest application of the measures referred to in Articles 20 and 21.

#### **Article 15 – Conditions and safeguards**

- 1 Each Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Section are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights and liberties, including rights arising pursuant to obligations it has undertaken under the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights, and other applicable international human rights instruments, and which shall incorporate the principle of proportionality.
- 2 Such conditions and safeguards shall, as appropriate in view of the nature of the procedure or power concerned, *inter alia*, include judicial or other independent supervision, grounds justifying application, and limitation of the scope and the duration of such power or procedure.
- 3 To the extent that it is consistent with the public interest, in particular the sound administration of justice, each Party shall consider the impact of the powers and procedures in this section upon the rights, responsibilities and legitimate interests of third parties.

#### *Title 2 – Expedited preservation of stored computer data*

#### **Article 16 – Expedited preservation of stored computer data**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to order or similarly obtain the expeditious preservation of specified computer data, including traffic data, that has been stored by means of a computer system, in particular where there are grounds to believe that the computer data is particularly vulnerable to loss or modification.
- 2 Where a Party gives effect to paragraph 1 above by means of an order to a person to preserve specified stored computer data in the person's possession or control, the Party shall adopt such legislative and other measures as may be necessary to oblige that person to preserve and maintain the integrity of that computer data for a period of time as long as necessary, up to a maximum of ninety days, to enable the competent authorities to seek its disclosure. A Party may provide for such an order to be subsequently renewed.
- 3 Each Party shall adopt such legislative and other measures as may be necessary to oblige the custodian or other person who is to preserve the

computer data to keep confidential the undertaking of such procedures for the period of time provided for by its domestic law.

- 4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

#### **Article 17 – Expedited preservation and partial disclosure of traffic data**

- 1 Each Party shall adopt, in respect of traffic data that is to be preserved under Article 16, such legislative and other measures as may be necessary to:
  - a ensure that such expeditious preservation of traffic data is available regardless of whether one or more service providers were involved in the transmission of that communication; and
  - b ensure the expeditious disclosure to the Party's competent authority, or a person designated by that authority, of a sufficient amount of traffic data to enable the Party to identify the service providers and the path through which the communication was transmitted.
- 2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

#### *Title 3 – Production order*

#### **Article 18 – Production order**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order:
  - a a person in its territory to submit specified computer data in that person's possession or control, which is stored in a computer system or a computer-data storage medium; and
  - b a service provider offering its services in the territory of the Party to submit subscriber information relating to such services in that service provider's possession or control.
- 2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.
- 3 For the purpose of this article, the term "subscriber information" means any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services other than traffic or content data and by which can be established:
  - a the type of communication service used, the technical provisions taken thereto and the period of service;
  - b the subscriber's identity, postal or geographic address, telephone and other access number, billing and payment information, available on the basis of the service agreement or arrangement;
  - c any other information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement.

*Title 4 – Search and seizure of stored computer data*

**Article 19 – Search and seizure of stored computer data**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to search or similarly access:
  - a a computer system or part of it and computer data stored therein; and
  - b a computer-data storage medium in which computer data may be stored in its territory.
- 2 Each Party shall adopt such legislative and other measures as may be necessary to ensure that where its authorities search or similarly access a specific computer system or part of it, pursuant to paragraph 1.a, and have grounds to believe that the data sought is stored in another computer system or part of it in its territory, and such data is lawfully accessible from or available to the initial system, the authorities shall be able to expeditiously extend the search or similar accessing to the other system.
- 3 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to seize or similarly secure computer data accessed according to paragraphs 1 or 2. These measures shall include the power to:
  - a seize or similarly secure a computer system or part of it or a computer-data storage medium;
  - b make and retain a copy of those computer data;
  - c maintain the integrity of the relevant stored computer data;
  - d render inaccessible or remove those computer data in the accessed computer system.
- 4 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order any person who has knowledge about the functioning of the computer system or measures applied to protect the computer data therein to provide, as is reasonable, the necessary information, to enable the undertaking of the measures referred to in paragraphs 1 and 2.
- 5 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

*Title 5 – Real-time collection of computer data*

**Article 20 – Real-time collection of traffic data**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to:
  - a collect or record through the application of technical means on the territory of that Party, and
  - b compel a service provider, within its existing technical capability:

- i to collect or record through the application of technical means on the territory of that Party; or
- ii to co-operate and assist the competent authorities in the collection or recording of,

traffic data, in real-time, associated with specified communications in its territory transmitted by means of a computer system.

- 2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of traffic data associated with specified communications transmitted in its territory, through the application of technical means on that territory.
- 3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.
- 4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

#### **Article 21 – Interception of content data**

- 1 Each Party shall adopt such legislative and other measures as may be necessary, in relation to a range of serious offences to be determined by domestic law, to empower its competent authorities to:
  - a collect or record through the application of technical means on the territory of that Party, and
  - b compel a service provider, within its existing technical capability:
    - i to collect or record through the application of technical means on the territory of that Party, or
    - ii to co-operate and assist the competent authorities in the collection or recording of,

content data, in real-time, of specified communications in its territory transmitted by means of a computer system.

- 2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of content data on specified communications in its territory through the application of technical means on that territory.
- 3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the

execution of any power provided for in this article and any information relating to it.

- 4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

### *Section 3 – Jurisdiction*

#### **Article 22 – Jurisdiction**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with Articles 2 through 11 of this Convention, when the offence is committed:
  - a in its territory; or
  - b on board a ship flying the flag of that Party; or
  - c on board an aircraft registered under the laws of that Party; or
  - d by one of its nationals, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State.
- 2 Each Party may reserve the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1.b through 1.d of this article or any part thereof.
- 3 Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in Article 24, paragraph 1, of this Convention, in cases where an alleged offender is present in its territory and it does not extradite him or her to another Party, solely on the basis of his or her nationality, after a request for extradition.
- 4 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law.
- 5 When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

## **Chapter III – International co-operation**

### *Section 1 – General principles*

#### *Title 1 – General principles relating to international co-operation*

#### **Article 23 – General principles relating to international co-operation**

The Parties shall co-operate with each other, in accordance with the provisions of this chapter, and through the application of relevant international instruments on international co-operation in criminal matters,

arrangements agreed on the basis of uniform or reciprocal legislation, and domestic laws, to the widest extent possible for the purposes of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.

*Title 2 – Principles relating to extradition*

**Article 24 – Extradition**

- 1 a This article applies to extradition between Parties for the criminal offences established in accordance with Articles 2 through 11 of this Convention, provided that they are punishable under the laws of both Parties concerned by deprivation of liberty for a maximum period of at least one year, or by a more severe penalty.
  - b Where a different minimum penalty is to be applied under an arrangement agreed on the basis of uniform or reciprocal legislation or an extradition treaty, including the European Convention on Extradition (ETS No. 24), applicable between two or more parties, the minimum penalty provided for under such arrangement or treaty shall apply.
- 2 The criminal offences described in paragraph 1 of this article shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.
- 3 If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence referred to in paragraph 1 of this article.
- 4 Parties that do not make extradition conditional on the existence of a treaty shall recognise the criminal offences referred to in paragraph 1 of this article as extraditable offences between themselves.
- 5 Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.
- 6 If extradition for a criminal offence referred to in paragraph 1 of this article is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case at the request of the requesting Party to its competent authorities for the purpose of prosecution and shall report the final outcome to the requesting Party in due course. Those authorities shall take their decision and conduct their inves-

tigations and proceedings in the same manner as for any other offence of a comparable nature under the law of that Party.

- 7 a Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and address of each authority responsible for making or receiving requests for extradition or provisional arrest in the absence of a treaty.
- b The Secretary General of the Council of Europe shall set up and keep updated a register of authorities so designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.

### *Title 3 – General principles relating to mutual assistance*

#### **Article 25 – General principles relating to mutual assistance**

- 1 The Parties shall afford one another mutual assistance to the widest extent possible for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.
- 2 Each Party shall also adopt such legislative and other measures as may be necessary to carry out the obligations set forth in Articles 27 through 35.
- 3 Each Party may, in urgent circumstances, make requests for mutual assistance or communications related thereto by expedited means of communication, including fax or e-mail, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where required by the requested Party. The requested Party shall accept and respond to the request by any such expedited means of communication.
- 4 Except as otherwise specifically provided in articles in this chapter, mutual assistance shall be subject to the conditions provided for by the law of the requested Party or by applicable mutual assistance treaties, including the grounds on which the requested Party may refuse co-operation. The requested Party shall not exercise the right to refuse mutual assistance in relation to the offences referred to in Articles 2 through 11 solely on the ground that the request concerns an offence which it considers a fiscal offence.
- 5 Where, in accordance with the provisions of this chapter, the requested Party is permitted to make mutual assistance conditional upon the existence of dual criminality, that condition shall be deemed fulfilled, irrespective of whether its laws place the offence within the same category of offence or denominate the offence by the same terminology as the requesting Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under its laws.

#### **Article 26 – Spontaneous information**

- 1 A Party may, within the limits of its domestic law and without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.
- 2 Prior to providing such information, the providing Party may request that it be kept confidential or only used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.

#### *Title 4 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements*

#### **Article 27 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements**

- 1 Where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested Parties, the provisions of paragraphs 2 through 9 of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.
- 2
  - a Each Party shall designate a central authority or authorities responsible for sending and answering requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution.
  - b The central authorities shall communicate directly with each other;
  - c Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of this paragraph;
  - d The Secretary General of the Council of Europe shall set up and keep updated a register of central authorities designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.
- 3 Mutual assistance requests under this article shall be executed in accordance with the procedures specified by the requesting Party, except where incompatible with the law of the requested Party.



- 4 The requested Party may, in addition to the grounds for refusal established in Article 25, paragraph 4, refuse assistance if:
  - a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or
  - b it considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests.
- 5 The requested Party may postpone action on a request if such action would prejudice criminal investigations or proceedings conducted by its authorities.
- 6 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.
- 7 The requested Party shall promptly inform the requesting Party of the outcome of the execution of a request for assistance. Reasons shall be given for any refusal or postponement of the request. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.
- 8 The requesting Party may request that the requested Party keep confidential the fact of any request made under this chapter as well as its subject, except to the extent necessary for its execution. If the requested Party cannot comply with the request for confidentiality, it shall promptly inform the requesting Party, which shall then determine whether the request should nevertheless be executed.
- 9
  - a In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by judicial authorities of the requesting Party to such authorities of the requested Party. In any such cases, a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.
  - b Any request or communication under this paragraph may be made through the International Criminal Police Organisation (Interpol).
  - c Where a request is made pursuant to sub-paragraph a. of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.
  - d Requests or communications made under this paragraph that do not involve coercive action may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.

- e Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this paragraph are to be addressed to its central authority.

#### **Article 28 – Confidentiality and limitation on use**

- 1 When there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and the requested Parties, the provisions of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.
- 2 The requested Party may make the supply of information or material in response to a request dependent on the condition that it is:
  - a kept confidential where the request for mutual legal assistance could not be complied with in the absence of such condition, or
  - b not used for investigations or proceedings other than those stated in the request.
- 3 If the requesting Party cannot comply with a condition referred to in paragraph 2, it shall promptly inform the other Party, which shall then determine whether the information should nevertheless be provided. When the requesting Party accepts the condition, it shall be bound by it.
- 4 Any Party that supplies information or material subject to a condition referred to in paragraph 2 may require the other Party to explain, in relation to that condition, the use made of such information or material.

### *Section 2 – Specific provisions*

#### *Title 1 – Mutual assistance regarding provisional measures*

#### **Article 29 – Expedited preservation of stored computer data**

- 1 A Party may request another Party to order or otherwise obtain the expeditious preservation of data stored by means of a computer system, located within the territory of that other Party and in respect of which the requesting Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the data.
- 2 A request for preservation made under paragraph 1 shall specify:
  - a the authority seeking the preservation;
  - b the offence that is the subject of a criminal investigation or proceedings and a brief summary of the related facts;

- c the stored computer data to be preserved and its relationship to the offence;
  - d any available information identifying the custodian of the stored computer data or the location of the computer system;
  - e the necessity of the preservation; and
  - f that the Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data.
- 3 Upon receiving the request from another Party, the requested Party shall take all appropriate measures to preserve expeditiously the specified data in accordance with its domestic law. For the purposes of responding to a request, dual criminality shall not be required as a condition to providing such preservation.
- 4 A Party that requires dual criminality as a condition for responding to a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of stored data may, in respect of offences other than those established in accordance with Articles 2 through 11 of this Convention, reserve the right to refuse the request for preservation under this article in cases where it has reasons to believe that at the time of disclosure the condition of dual criminality cannot be fulfilled.
- 5 In addition, a request for preservation may only be refused if:
- a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or
  - b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests.
- 6 Where the requested Party believes that preservation will not ensure the future availability of the data or will threaten the confidentiality of or otherwise prejudice the requesting Party's investigation, it shall promptly so inform the requesting Party, which shall then determine whether the request should nevertheless be executed.
- 7 Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.

#### **Article 30 – Expedited disclosure of preserved traffic data**

- 1 Where, in the course of the execution of a request made pursuant to Article 29 to preserve traffic data concerning a specific communication, the requested Party discovers that a service provider in another State was

involved in the transmission of the communication, the requested Party shall expeditiously disclose to the requesting Party a sufficient amount of traffic data to identify that service provider and the path through which the communication was transmitted.

- 2 Disclosure of traffic data under paragraph 1 may only be withheld if:
  - a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence; or
  - b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests.

#### *Title 2 – Mutual assistance regarding investigative powers*

##### **Article 31 – Mutual assistance regarding accessing of stored computer data**

- 1 A Party may request another Party to search or similarly access, seize or similarly secure, and disclose data stored by means of a computer system located within the territory of the requested Party, including data that has been preserved pursuant to Article 29.
- 2 The requested Party shall respond to the request through the application of international instruments, arrangements and laws referred to in Article 23, and in accordance with other relevant provisions of this chapter.
- 3 The request shall be responded to on an expedited basis where:
  - a there are grounds to believe that relevant data is particularly vulnerable to loss or modification; or
  - b the instruments, arrangements and laws referred to in paragraph 2 otherwise provide for expedited co-operation.

##### **Article 32 – Trans-border access to stored computer data with consent or where publicly available**

A Party may, without the authorisation of another Party:

- a access publicly available (open source) stored computer data, regardless of where the data is located geographically; or
- b access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system.

##### **Article 33 – Mutual assistance in the real-time collection of traffic data**

- 1 The Parties shall provide mutual assistance to each other in the real-time collection of traffic data associated with specified communications in their territory transmitted by means of a computer system. Subject to the pro-

visions of paragraph 2, this assistance shall be governed by the conditions and procedures provided for under domestic law.

- 2 Each Party shall provide such assistance at least with respect to criminal offences for which real-time collection of traffic data would be available in a similar domestic case.

#### **Article 34 – Mutual assistance regarding the interception of content data**

The Parties shall provide mutual assistance to each other in the real-time collection or recording of content data of specified communications transmitted by means of a computer system to the extent permitted under their applicable treaties and domestic laws.

#### *Title 3 – 24/7 Network*

##### **Article 35 – 24/7 Network**

- 1 Each Party shall designate a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:
  - a the provision of technical advice;
  - b the preservation of data pursuant to Articles 29 and 30;
  - c the collection of evidence, the provision of legal information, and locating of suspects.
- 2
  - a A Party's point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.
  - b If the point of contact designated by a Party is not part of that Party's authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to coordinate with such authority or authorities on an expedited basis.
- 3 Each Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network.

#### **Chapter IV – Final provisions**

##### **Article 36 – Signature and entry into force**

- 1 This Convention shall be open for signature by the member States of the Council of Europe and by non-member States which have participated in its elaboration.

- 2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States, including at least three member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraphs 1 and 2.
- 4 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Convention in accordance with the provisions of paragraphs 1 and 2.

#### **Article 37 – Accession to the Convention**

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting with and obtaining the unanimous consent of the Contracting States to the Convention, may invite any State which is not a member of the Council and which has not participated in its elaboration to accede to this Convention. The decision shall be taken by the majority provided for in Article 20.d. of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.
- 2 In respect of any State acceding to the Convention under paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### **Article 38 – Territorial application**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe.

The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 39 – Effects of the Convention**

- 1 The purpose of the present Convention is to supplement applicable multi-lateral or bilateral treaties or arrangements as between the Parties, including the provisions of:
  - the European Convention on Extradition, opened for signature in Paris, on 13 December 1957 (ETS No. 24);
  - the European Convention on Mutual Assistance in Criminal Matters, opened for signature in Strasbourg, on 20 April 1959 (ETS No. 30);
  - the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, opened for signature in Strasbourg, on 17 March 1978 (ETS No. 99).
- 2 If two or more Parties have already concluded an agreement or treaty on the matters dealt with in this Convention or have otherwise established their relations on such matters, or should they in future do so, they shall also be entitled to apply that agreement or treaty or to regulate those relations accordingly. However, where Parties establish their relations in respect of the matters dealt with in the present Convention other than as regulated therein, they shall do so in a manner that is not inconsistent with the Convention's objectives and principles.
- 3 Nothing in this Convention shall affect other rights, restrictions, obligations and responsibilities of a Party.

#### **Article 40 – Declarations**

By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the possibility of requiring additional elements as provided for under Articles 2, 3, 6 paragraph 1.b, 7, 9 paragraph 3, and 27, paragraph 9.e.

#### **Article 41 – Federal clause**

- 1 A federal State may reserve the right to assume obligations under Chapter II of this Convention consistent with its fundamental principles governing the relationship between its central government and constituent States or other similar territorial entities provided that it is still able to co-operate under Chapter III.
- 2 When making a reservation under paragraph 1, a federal State may not apply the terms of such reservation to exclude or substantially diminish its obligations to provide for measures set forth in Chapter II. Overall, it

shall provide for a broad and effective law enforcement capability with respect to those measures.

- 3 With regard to the provisions of this Convention, the application of which comes under the jurisdiction of constituent States or other similar territorial entities, that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States of the said provisions with its favourable opinion, encouraging them to take appropriate action to give them effect.

#### **Article 42 – Reservations**

By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation(s) provided for in Article 4, paragraph 2, Article 6, paragraph 3, Article 9, paragraph 4, Article 10, paragraph 3, Article 11, paragraph 3, Article 14, paragraph 3, Article 22, paragraph 2, Article 29, paragraph 4, and Article 41, paragraph 1. No other reservation may be made.

#### **Article 43 – Status and withdrawal of reservations**

- 1 A Party that has made a reservation in accordance with Article 42 may wholly or partially withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect on the date of receipt of such notification by the Secretary General. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date on which the notification is received by the Secretary General, the withdrawal shall take effect on such a later date.
- 2 A Party that has made a reservation as referred to in Article 42 shall withdraw such reservation, in whole or in part, as soon as circumstances so permit.
- 3 The Secretary General of the Council of Europe may periodically enquire with Parties that have made one or more reservations as referred to in Article 42 as to the prospects for withdrawing such reservation(s).

#### **Article 44 – Amendments**

- 1 Amendments to this Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention as well as to any State which has acceded to, or has been invited to accede to, this Convention in accordance with the provisions of Article 37.



- 2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC), which shall submit to the Committee of Ministers its opinion on that proposed amendment.
- 3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDPC and, following consultation with the non-member States Parties to this Convention, may adopt the amendment.
- 4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
- 5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

#### **Article 45 – Settlement of disputes**

- 1 The European Committee on Crime Problems (CDPC) shall be kept informed regarding the interpretation and application of this Convention.
- 2 In case of a dispute between Parties as to the interpretation or application of this Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the CDPC, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.

#### **Article 46 – Consultations of the Parties**

- 1 The Parties shall, as appropriate, consult periodically with a view to facilitating:
  - a the effective use and implementation of this Convention, including the identification of any problems thereof, as well as the effects of any declaration or reservation made under this Convention;
  - b the exchange of information on significant legal, policy or technological developments pertaining to cybercrime and the collection of evidence in electronic form;
  - c consideration of possible supplementation or amendment of the Convention.
- 2 The European Committee on Crime Problems (CDPC) shall be kept periodically informed regarding the result of consultations referred to in paragraph 1.
- 3 The CDPC shall, as appropriate, facilitate the consultations referred to in paragraph 1 and take the measures necessary to assist the Parties in their efforts to supplement or amend the Convention. At the latest three years after the present Convention enters into force, the European Committee

on Crime Problems (CDPC) shall, in co-operation with the Parties, conduct a review of all of the Convention's provisions and, if necessary, recommend any appropriate amendments.

- 4 Except where assumed by the Council of Europe, expenses incurred in carrying out the provisions of paragraph 1 shall be borne by the Parties in the manner to be determined by them.
- 5 The Parties shall be assisted by the Secretariat of the Council of Europe in carrying out their functions pursuant to this article.

#### **Article 47 – Denunciation**

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

#### **Article 48 – Notification**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in the elaboration of this Convention as well as any State which has acceded to, or has been invited to accede to, this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 36 and 37;
- d any declaration made under Article 40 or reservation made in accordance with Article 42;
- e any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Budapest, this 23rd day of November 2001, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to it.

## **Additional Protocol to the Convention on Cybercrime, concerning the Criminalisation of Acts of a Racist and Xenophobic Nature committed through Computer Systems**

Strasbourg, 28.I.2003, ETS No. 189

The member States of the Council of Europe and the other States Parties to the Convention on Cybercrime, opened for signature in Budapest on 23 November 2001, signatory hereto;

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recalling that all human beings are born free and equal in dignity and rights;

Stressing the need to secure a full and effective implementation of all human rights without any discrimination or distinction, as enshrined in European and other international instruments;

Convinced that acts of a racist and xenophobic nature constitute a violation of human rights and a threat to the rule of law and democratic stability;

Considering that national and international law need to provide adequate legal responses to propaganda of a racist and xenophobic nature committed through computer systems;

Aware of the fact that propaganda to such acts is often subject to criminalisation in national legislation;

Having regard to the Convention on Cybercrime, which provides for modern and flexible means of international co-operation and convinced of the need to harmonise substantive law provisions concerning the fight against racist and xenophobic propaganda;

Aware that computer systems offer an unprecedented means of facilitating freedom of expression and communication around the globe;

Recognising that freedom of expression constitutes one of the essential foundations of a democratic society, and is one of the basic conditions for its progress and for the development of every human being;

Concerned, however, by the risk of misuse or abuse of such computer systems to disseminate racist and xenophobic propaganda;

Mindful of the need to ensure a proper balance between freedom of expression and an effective fight against acts of a racist and xenophobic nature;

Recognising that this Protocol is not intended to affect established principles relating to freedom of expression in national legal systems;

Taking into account the relevant international legal instruments in this field, and in particular the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol No. 12 concerning the general prohibition of discrimination, the existing Council of Europe conventions on co-operation in the penal field, in particular the Convention on Cybercrime, the United Nations International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, the European Union Joint Action of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia;

Welcoming the recent developments which further advance international understanding and co-operation in combating cybercrime and racism and xenophobia;

Having regard to the Action Plan adopted by the Heads of State and Government of the Council of Europe on the occasion of their Second Summit (Strasbourg, 10-11 October 1997) to seek common responses to the developments of the new technologies based on the standards and values of the Council of Europe;

Have agreed as follows:

## **Chapter I – Common provisions**

### **Article 1 – Purpose**

The purpose of this Protocol is to supplement, as between the Parties to the Protocol, the provisions of the Convention on Cybercrime, opened for signature in Budapest on 23 November 2001 (hereinafter referred to as “the Convention”), as regards the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

### **Article 2 – Definition**

1 For the purposes of this Protocol:

“racist and xenophobic material” means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.

- 2 The terms and expressions used in this Protocol shall be interpreted in the same manner as they are interpreted under the Convention.

## **Chapter II – Measures to be taken at the national level**

### **Article 3 – Dissemination of racist and xenophobic material through computer systems**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:  
distributing, or otherwise making available, racist and xenophobic material to the public through a computer system.
- 2 A Party may reserve the right not to attach criminal liability to conduct as defined by paragraph 1 of this article, where the material, as defined in Article 2, paragraph 1, advocates, promotes or incites discrimination that is not associated with hatred or violence, provided that other effective remedies are available.
- 3 Notwithstanding paragraph 2 of this article, a Party may reserve the right not to apply paragraph 1 to those cases of discrimination for which, due to established principles in its national legal system concerning freedom of expression, it cannot provide for effective remedies as referred to in the said paragraph 2.

### **Article 4 – Racist and xenophobic motivated threat**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

threatening, through a computer system, with the commission of a serious criminal offence as defined under its domestic law, (i) persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics.

### **Article 5 – Racist and xenophobic motivated insult**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:  
insulting publicly, through a computer system, (i) persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics.

- 2 A Party may either:
  - a require that the offence referred to in paragraph 1 of this article has the effect that the person or group of persons referred to in paragraph 1 is exposed to hatred, contempt or ridicule; or
  - b reserve the right not to apply, in whole or in part, paragraph 1 of this article.

**Article 6 – Denial, gross minimisation, approval or justification of genocide or crimes against humanity**

- 1 Each Party shall adopt such legislative measures as may be necessary to establish the following conduct as criminal offences under its domestic law, when committed intentionally and without right:

distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party.

- 2 A Party may either
  - a require that the denial or the gross minimisation referred to in paragraph 1 of this article is committed with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors, or otherwise
  - b reserve the right not to apply, in whole or in part, paragraph 1 of this article.

**Article 7 – Aiding and abetting**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, aiding or abetting the commission of any of the offences established in accordance with this Protocol, with intent that such offence be committed.

**Chapter III – Relations between the Convention and this Protocol**

**Article 8 – Relations between the Convention and this Protocol**

- 1 Articles 1, 12, 13, 22, 41, 44, 45 and 46 of the Convention shall apply, *mutatis mutandis*, to this Protocol.

- 2 The Parties shall extend the scope of application of the measures defined in Articles 14 to 21 and Articles 23 to 35 of the Convention, to Articles 2 to 7 of this Protocol.

## **Chapter IV – Final provisions**

### **Article 9 – Expression of consent to be bound**

- 1 This Protocol shall be open for signature by the States which have signed the Convention, which may express their consent to be bound by either:
  - a signature without reservation as to ratification, acceptance or approval; or
  - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 A State may not sign this Protocol without reservation as to ratification, acceptance or approval, or deposit an instrument of ratification, acceptance or approval, unless it has already deposited or simultaneously deposits an instrument of ratification, acceptance or approval of the Convention.
- 3 The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

### **Article 10 – Entry into force**

- 1 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 9.
- 2 In respect of any State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of its signature without reservation as to ratification, acceptance or approval or deposit of its instrument of ratification, acceptance or approval.

### **Article 11 – Accession**

- 1 After the entry into force of this Protocol, any State which has acceded to the Convention may also accede to the Protocol.
- 2 Accession shall be effected by the deposit with the Secretary General of the Council of Europe of an instrument of accession which shall take effect on the first day of the month following the expiration of a period of three months after the date of its deposit.

### **Article 12 – Reservations and declarations**

- 1 Reservations and declarations made by a Party to a provision of the Convention shall be applicable also to this Protocol, unless that Party

declares otherwise at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

- 2 By a written notification addressed to the Secretary General of the Council of Europe, any Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation(s) provided for in Articles 3, 5 and 6 of this Protocol. At the same time, a Party may avail itself, with respect to the provisions of this Protocol, of the reservation(s) provided for in Article 22, paragraph 2, and Article 41, paragraph 1, of the Convention, irrespective of the implementation made by that Party under the Convention. No other reservations may be made.
- 3 By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the possibility of requiring additional elements as provided for in Article 5, paragraph 2.a, and Article 6, paragraph 2.a, of this Protocol.

#### **Article 13 – Status and withdrawal of reservations**

- 1 A Party that has made a reservation in accordance with Article 12 above shall withdraw such reservation, in whole or in part, as soon as circumstances so permit. Such withdrawal shall take effect on the date of receipt of a notification addressed to the Secretary General of the Council of Europe. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date on which the notification is received by the Secretary General, the withdrawal shall take effect on such a later date.
- 2 The Secretary General of the Council of Europe may periodically enquire with Parties that have made one or more reservations in accordance with Article 12 as to the prospects for withdrawing such reservation(s).

#### **Article 14 – Territorial application**

- 1 Any Party may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
- 2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a



notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 15 – Denunciation**

- 1 Any Party may, at any time, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

#### **Article 16 – Notification**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in the elaboration of this Protocol as well as any State which has acceded to, or has been invited to accede to, this Protocol of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with its Articles 9, 10 and 11;
- d any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 28th day of January 2003, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Protocol, and to any State invited to accede to it.



## **Other criminal conventions**



# European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders

Strasbourg, 30.XI.1964, ETS No. 51

## Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity among its members;

Being resolved to take concerted action to combat crime;

Considering that, to this end, they are in duty bound to ensure, in the territory of the other Contracting Parties, either the social rehabilitation of offenders given suspended sentences or released conditionally by their own courts, or the enforcement of the sentence when the prescribed conditions are not fulfilled,

Have agreed as follows:

## Part I – Basic principles

### Article 1

- 1 The Contracting Parties undertake to grant each other in the circumstances set out below the mutual assistance necessary for the social rehabilitation of the offenders referred to in Article 2. This assistance shall take the form of supervision designed to facilitate the good conduct and readaptation to social life of such offenders and to keep a watch on their behaviour with a view, should it become necessary, either to pronouncing sentence on them or to enforcing a sentence already pronounced.
- 2 The Contracting Parties shall, in the circumstances set out below and in accordance with the following provisions, enforce such detention order or other penalty involving deprivation of liberty as may have been passed on the offender, application of which has been suspended.

### Article 2

- 1 For the purposes of this Convention, the term “offender” shall be taken to mean any person, who, in the territory of one of the Contracting Parties, has:

- a been found guilty by a court and placed on probation without sentence having been pronounced;
  - b been given a suspended sentence involving deprivation of liberty, or a sentence of which the enforcement has been conditionally suspended, in whole or in part, either at the time of the sentence or subsequently.
- 2 In subsequent articles, the term "sentence" shall be deemed to include all judicial decisions taken in accordance with sub paragraphs a and b of paragraph 1 above.

### **Article 3**

The decisions referred to in Article 2 must be final and must have executive force.

### **Article 4**

The offence on which any request under Article 5 is based shall be one punishable under the legislation of both the requesting and the requested State.

### **Article 5**

- 1 The State which pronounced the sentence may request the State in whose territory the offender establishes his ordinary residence:
  - a to carry out supervision only, in accordance with Part II;
  - b to carry out supervision and if necessary to enforce the sentence, in accordance with Parts II and III;
  - c to assume entire responsibility for applying the sentence, in accordance with the provisions of Part IV.
- 2 The requested State shall act upon such a request, under the conditions laid down in this Convention.
- 3 If the requesting State has made one of the requests mentioned in paragraph 1 above, and the requested State deems it preferable, in any particular case, to adopt one of the other courses provided for in that paragraph, the requested State may refuse to accede to such a request, at the same time declaring its willingness to follow another course, which it shall indicate.

### **Article 6**

Supervision, enforcement or complete application of the sentence, as defined in the preceding article, shall be carried out, at the request of the State in which sentence was pronounced, by the State in whose territory the offender establishes his ordinary residence.

### **Article 7**

- 1 Supervision, enforcement or complete application shall be refused:

- a if the request is regarded by the requested State as likely to prejudice its sovereignty, security, the fundamentals of its legal system, or other essential interests;
  - b if the request relates to a sentence for an offence which has been judged in final instance in the requested State;
  - c if the act for which sentence has been passed is considered by the requested State as either a political offence or an offence related to a political offence, or as a purely military offence;
  - d if the penalty imposed can no longer be exacted, because of the lapse of time, under the legislation of either the requesting or the requested State;
  - e if the offender has benefited under an amnesty or a pardon in either the requesting or the requested State.
- 2 Supervision, enforcement or complete application may be refused:
- a if the competent authorities in the requested State have decided not to take proceedings, or to drop proceedings already begun, in respect of the same act;
  - b if the act for which sentence has been pronounced is also the subject of proceedings in the requested State;
  - c if the sentence to which the request relates was pronounced *in absentia*;
  - d to the extent that the requested State deems the sentence incompatible with the principles governing the application of its own penal law, in particular, if on account of his age the offender could not have been sentenced in the requested State.
- 3 In the case of fiscal offences, supervision or enforcement shall be carried out, in accordance with the provisions of this Convention, only if the Contracting Parties have so decided in respect of each such offence or category of offences.

#### **Article 8**

The requesting and requested State shall keep each other informed in so far as it is necessary of all circumstances likely to affect measures of supervision or enforcement in the territory of the requested State.

#### **Article 9**

The requested State shall inform the requesting State without delay what action is being taken on its request

In the case of total or partial refusal to comply, it shall communicate its reasons for such refusal.

## **Part II – Supervision**

### **Article 10**

The requesting State shall inform the requested State of the conditions imposed on the offender and of any supervisory measures with which he must comply during his period of probation.

### **Article 11**

- 1 In complying with a request for supervision, the requested State shall, if necessary, adapt the prescribed supervisory measures in accordance with its own laws.
- 2 In no case may the supervisory measures applied by the requested State, as regards either their nature or their duration, be more severe than those prescribed by the requesting State.

### **Article 12**

When the requested State agrees to undertake supervision, it shall proceed as follows:

- 1 It shall inform the requesting State without delay of the answer given to its request;
- 2 It shall contact the authorities or bodies responsible in its own territory for supervising and assisting offenders;
- 3 It shall inform the requesting State of all measures taken and their implementation.

### **Article 13**

Should the offender become liable to revocation of the conditional suspension of his sentence referred to in Article 2 either because he has been prosecuted or sentenced for a new offence, or because he has failed to observe the prescribed conditions, the necessary information shall be supplied to the requesting State automatically and without delay by the requested State.

### **Article 14**

When the period of supervision expires, the requested State shall, on application by the requesting State, transmit all necessary information to the latter.

### **Article 15**

The requesting State shall alone be competent to judge, on the basis of the information and comments supplied by the requested State, whether or not the offender has satisfied the conditions imposed upon him, and,



on the basis of such appraisal, to take any further steps provided for by its own legislation.

It shall inform the requested State of its decision.

### **Part III – Enforcement of sentences**

#### **Article 16**

After revocation of the conditional suspension of the sentence by the requesting State, and on application by that State, the requested State shall be competent to enforce the said sentence.

#### **Article 17**

Enforcement in the requested State shall take place in accordance with the law of that State, after verification of the authenticity of the request for enforcement and its compatibility with the terms of this Convention.

#### **Article 18**

The requested State shall in due course transmit to the requesting State a document certifying that the sentence has been enforced.

#### **Article 19**

The requested State shall, if need be, substitute for the penalty imposed in the requesting State, the penalty or measure provided for by its own legislation for a similar offence. The nature of such penalty or measure shall correspond as closely as possible to that in the sentence to be enforced. It may not exceed the maximum penalty provided for by the legislation of the requested State, nor may it be longer or more rigorous than that imposed by the requesting State.

#### **Article 20**

The requesting State may no longer itself take any of the measures of enforcement requested, unless the requested State indicates that it is unwilling or unable to do so.

#### **Article 21**

The requested State shall be competent to grant the offender conditional release. The right of pardon may be exercised by either the requesting or the requested State.

### **Part IV – Relinquishment to the requested state**

#### **Article 22**

The requesting State shall communicate to the requested State the sentence of which it requests complete application.

#### **Article 23**

- 1 The requested State shall adapt to its own penal legislation the penalty or measure prescribed as if the sentence had been pronounced for the same offence committed in its own territory.
- 2 The penalty imposed by the requested State may not be more severe than that pronounced in the requesting State.

#### **Article 24**

The requested State shall ensure complete application of the sentence thus adapted as if it were a sentence pronounced by its own courts.

#### **Article 25**

The acceptance by the requested State of a request in accordance with the present Part IV shall extinguish the right of the requesting State to enforce the sentence.

### **Part V – Common provisions**

#### **Article 26**

- 1 All requests in accordance with Article 5 shall be transmitted in writing. They shall indicate:
  - a the issuing authority;
  - b their purpose;
  - c the identity of the offender and his place of residence in the requested State.
- 2 Requests for supervision shall be accompanied by the original or a certified transcript of the Court findings containing the reasons which justify the supervision and specifying the measures imposed on the offender. They should also certify the enforceable nature of the sentence and of the supervisory measures to be applied. So far as possible, they shall state the circumstances of the offence giving rise to the sentence of supervision, its time and place and legal destination and, where necessary, the length of the sentence to be enforced. They shall give full details of the nature and duration of the measures of supervision requested, and include a reference to the legal provisions applicable together with necessary information on the character of the offender and his behaviour in the requesting State before and after pronouncement of the supervisory order.
- 3 Requests for enforcement shall be accompanied by the original, or a certified transcript, of the decision to revoke conditional suspension of the pronouncement or enforcement of sentence and also of the decision imposing the sentence now to be enforced. The enforceable nature of

both decisions shall be certified in the manner prescribed by the law of the State in which they were pronounced.

If the judgment to be enforced has replaced an earlier one and does not contain a recital of the facts of the case, a certified copy of the judgment containing such recital shall also be attached.

- 4 Requests for complete application of the sentence shall be accompanied by the documents mentioned in paragraph 2 above.

#### **Article 27**

- 1 Requests shall be sent by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State and the reply shall be sent through the same channels.
- 2 Any communications necessary under the terms of this Convention shall be exchanged either through the channels referred to in paragraph 1 of this article, or directly between the authorities of the Contracting Parties.
- 3 In case of emergency, the communications referred to in paragraph 2 of this article may be made through the International Criminal Police Organisation (Interpol).
- 4 Any Contracting Party may, by declaration addressed to the Secretary General of the Council of Europe, give notice of its intention to adopt new rules in regard to the communications referred to in paragraphs 1 and 2 of this article.

#### **Article 28**

If the requested State considers that the information supplied by the requesting State is inadequate to enable it to apply this Convention, it shall ask for the additional information required. It may fix a time limit for receipt of such information.

#### **Article 29**

- 1 Subject to the provisions of paragraph 2 of this article, no translation of requests, or of the supporting documents, or of any other documents relating to the application of this Convention, shall be required.
- 2 Any Contracting Party may, when signing this Convention or depositing its instrument of ratification, acceptance or accession, by a declaration addressed to the Secretary General of the Council of Europe, reserve the right to require that requests and supporting documents should be accompanied by a translation into its own language, or into one of the official languages of the Council of Europe, or into such one of those languages as it shall indicate. The other Contracting Parties may claim reciprocity.

- 3 This article shall be without prejudice to any provision regarding translation of requests and supporting documents that may be contained in agreements or arrangements now in force or that may be concluded between two or more of the Contracting Parties.

#### **Article 30**

Documents transmitted in application of this Convention shall not require authentication.

#### **Article 31**

The requested State shall have powers to collect, at the request of the requesting State, the cost of prosecution and trial incurred in that State.

Should it collect such costs, it shall be obliged to refund to the requesting State experts' fees only.

#### **Article 32**

Supervision and enforcement costs incurred in the requested State shall not be refunded.

### **Part VI – Final provisions**

#### **Article 33**

This Convention shall be without prejudice to police regulations relating to foreigners.

#### **Article 34**

- 1 This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
- 2 This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.
- 3 In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

#### **Article 35**

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

### **Article 36**

- 1 Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 39 of this Convention.

### **Article 37**

- 1 This Convention shall not affect the undertakings given in any other existing or future international Convention, whether bilateral or multilateral, between two or more of the Contracting Parties, on extradition or any other form of mutual assistance in criminal matters.
- 2 The Contracting Parties may not conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, except in order to supplement its provisions or facilitate application of the principles embodied in it.
- 3 Should two or more Contracting Parties, however, have already established their relations in this matter on the basis of uniform legislation, or instituted a special system of their own, or should they in future do so, they shall be entitled to regulate those relations accordingly, notwithstanding the terms of this Convention.

Contracting Parties ceasing to apply the terms of this Convention to their mutual relations in this matter shall notify the Secretary General of the Council of Europe to that effect.

### **Article 38**

- 1 Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, declare that it avails itself of one or more of the reservations provided for in the annex to this Convention.
- 2 Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

- 3 A Contracting Party which has made a reservation in respect of any provision of this Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.
- 4 Any Contracting Party may, on signing the present Convention, or on depositing its instrument of ratification, acceptance or accession, notify the Secretary General of the Council of Europe that it considers ratification, acceptance or accession as entailing an obligation, in international law, to introduce into municipal law measures to implement the said Convention.

#### **Article 39**

- 1 This Convention shall remain in force indefinitely.
- 2 Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 3 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

#### **Article 40**

The Secretary General of the Council of Europe shall notify the member States of the Council, and any State that has acceded to this Convention of:

- a any signature;
- b any deposit of an instrument of ratification, acceptance or accession;
- c any date of entry into force of this Convention in accordance with Article 34;
- d any notification or declaration received in pursuance of the provisions of paragraph 4 of Article 27, of paragraph 2 of Article 29, of paragraph 3 of Article 37 and of paragraph 4 of Article 38;
- e any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 36;
- f any reservation made in pursuance of the provisions of paragraph 1 of Article 38;
- g the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 2 of Article 38;
- h any notification received in pursuance of the provisions of Article 39, and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg this 30th day of November 1964, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

### **Annex**

Any Contracting Party may declare that it reserves the right to make known:

- 1 that it does not accept the provisions of the Convention as related to the enforcement of sentences or their complete application;
- 2 that it accepts only part of these provisions;
- 3 that it does not accept the provisions of paragraph 2 of Article 37.





## European Convention on the International Validity of Criminal Judgments

The Hague, 28.V.1970, ETS No. 70

### Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the fight against crime, which is becoming increasingly an international problem, calls for the use of modern and effective methods on an international scale;

Convinced of the need to pursue a common criminal policy aimed at the protection of society;

Conscious of the need to respect human dignity and to promote the rehabilitation of offenders;

Considering that the aim of the Council of Europe is to achieve greater unity between its Members,

Have agreed as follows:

### Part I – Definitions

#### Article 1

For the purpose of this Convention:

- a "European criminal judgment" means any final decision delivered by a criminal court of a Contracting State as a result of criminal proceedings;
- b "Offence" comprises, apart from acts dealt with under the criminal law, those dealt with under the legal provisions listed in Appendix II to the present Convention on condition that where these provisions give competence to an administrative authority there must be opportunity for the person concerned to have the case tried by a court;
- c "Sentence" means the imposition of a sanction;
- d "Sanction" means any punishment or other measure expressly imposed on a person, in respect of an offence, in a European criminal judgment, or in an *ordonnance pénale*;
- e "Disqualification" means any loss or suspension of a right or any prohibition or loss of legal capacity;
- f "Judgment rendered *in absentia*" means any decision considered as such under Article 21, paragraph 2;

- g “ordonnance pénale” means any of the decisions delivered in another Contracting State and listed in Appendix III to this Convention.

## **Part II – Enforcement of European criminal judgments**

### *Section 1 – General provisions*

#### *a – General conditions of enforcement*

##### **Article 2**

This part is applicable to:

- a sanctions involving deprivation of liberty;
- b fines or confiscation;
- c disqualifications.

##### **Article 3**

- 1 A Contracting State shall be competent in the cases and under the conditions provided for in this Convention to enforce a sanction imposed in another Contracting State which is enforceable in the latter State.
- 2 This competence can only be exercised following a request by the other Contracting State.

##### **Article 4**

- 1 The sanction shall not be enforced by another Contracting State unless under its law the act for which the sanction was imposed would be an offence if committed on its territory and the person on whom the sanction was imposed liable to punishment if he had committed the act there.
- 2 If the sentence relates to two or more offences, not all of which fulfil the requirements of paragraph 1, the sentencing State shall specify which part of the sanction applies to the offences that satisfy those requirements.

##### **Article 5**

The sentencing State may request another Contracting State to enforce the sanction only if one or more of the following conditions are fulfilled:

- a if the person sentenced is ordinarily resident in the other State;
- b if the enforcement of the sanction in the other State is likely to improve the prospects for the social rehabilitation of the person sentenced;
- c if, in the case of a sanction involving deprivation of liberty, the sanction could be enforced following the enforcement of another sanction involving deprivation of liberty which the person sentenced is undergoing or is to undergo in the other State;

- d if the other State is the State of origin of the person sentenced and has declared itself willing to accept responsibility for the enforcement of that sanction;
- e if it considers that it cannot itself enforce the sanction, even by having recourse to extradition, and that the other State can.

#### **Article 6**

Enforcement requested in accordance with the foregoing provisions may not be refused, in whole or in part, save:

- a where enforcement would run counter to the fundamental principles of the legal system of the requested State;
- b where the requested State considers the offence for which the sentence was passed to be of a political nature or a purely military one;
- c where the requested State considers that there are substantial grounds for believing that the sentence was brought about or aggravated by considerations of race, religion, nationality or political opinion;
- d where enforcement would be contrary to the international undertakings of the requested State;
- e where the act is already the subject of proceedings in the requested State or where the requested State decides to institute proceedings in respect of the act;
- f where the competent authorities in the requested State have decided not to take proceedings or to drop proceedings already begun, in respect of the same act;
- g where the act was committed outside the territory of the requesting State;
- h where the requested State is unable to enforce the sanction;
- i where the request is grounded on Article 5.e and none of the other conditions mentioned in that article is fulfilled;
- j where the requested State considers that the requesting State is itself able to enforce the sanction;
- k where the age of the person sentenced at the time of the offence was such that he could not have been prosecuted in the requested State;
- l where under the law of the requested State the sanction imposed can no longer be enforced because of the lapse of time;
- m where and to the extent that the sentence imposes a disqualification.

#### **Article 7**

A request for enforcement shall not be complied with if enforcement would run counter to the principles recognised in the provisions of Section 1 of Part III of this Convention.

*b – Effects of the transfer of enforcement*

**Article 8**

For the purposes of Article 6, paragraph 1 and the reservation mentioned under c of Appendix I of the present Convention any act which interrupts or suspends a time limitation validly performed by the authorities of the sentencing State shall be considered as having the same effect for the purpose of reckoning time limitation in the requested State in accordance with the law of that State.

**Article 9**

- 1 A sentenced person detained in the requesting State who has been surrendered to the requested State for the purpose of enforcement shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which the sentence to be enforced was imposed, nor shall he for any other reason be restricted in his personal freedom, except in the following cases:
  - a when the State which surrendered him consents. A request for consent shall be submitted, accompanied by all relevant documents and a legal record of any statement made by the convicted person in respect of the offence concerned. Consent shall be given when the offence for which it is requested would itself be subject to extradition under the law of the State requesting enforcement or when extradition would be excluded only by reason of the amount of the punishment;
  - b when the sentenced person, having had an opportunity to leave the territory of the State to which he has been surrendered, has not done so within 45 days of his final discharge, or if he has returned to that territory after leaving it.
- 2 The State requested to enforce the sentence may, however, take any measure necessary to remove the person from its territory, or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time.

**Article 10**

- 1 The enforcement shall be governed by the law of the requested State and that State alone shall be competent to take all appropriate decisions, such as those concerning conditional release.
- 2 The requesting State alone shall have the right to decide on any application for review of sentence.
- 3 Either State may exercise the right of amnesty or pardon.

#### **Article 11**

- 1 When the sentencing State has requested enforcement it may no longer itself begin the enforcement of a sanction which is the subject of that request. The sentencing State may, however, begin enforcement of a sanction involving deprivation of liberty when the sentenced person is already detained on the territory of that State at the moment of the presentation of the request.
- 2 The right of enforcement shall revert to the requesting State:
  - a if it withdraws its request before the requested State has informed it of an intention to take action on the request;
  - b if the requested State notifies a refusal to take action on the request;
  - c if the requested State expressly relinquishes its right of enforcement. Such relinquishment shall only be possible if both the States concerned agree or if enforcement is no longer possible in the requested State. In the latter case, a relinquishment demanded by the requesting State shall be compulsory.

#### **Article 12**

- 1 The competent authorities of the requested State shall discontinue enforcement as soon as they have knowledge of any pardon, amnesty or application for review of sentence or any other decision by reason of which the sanction ceases to be enforceable. The same shall apply to the enforcement of a fine when the person sentenced has paid it to the competent authority in the requesting State.
- 2 The requesting State shall without delay inform the requested State of any decision or procedural measure taken on its territory that causes the right of enforcement to lapse in accordance with the preceding paragraph.

#### *c – Miscellaneous provisions*

#### **Article 13**

- 1 The transit through the territory of a Contracting State of a detained person, who is to be transferred to a third Contracting State in application of this Convention, shall be granted at the request of the State in which the person is detained. The State of transit may require to be supplied with any appropriate document before taking a decision on the request. The person being transferred shall remain in custody in the territory of the State of transit, unless the State from which he is being transferred requests his release.
- 2 Except in cases where the transfer is requested under Article 34 any Contracting State may refuse transit:
  - a on one of the grounds mentioned in Article 6.b and c;
  - b on the ground that the person concerned is one of its own nationals.

- 3 If air transport is used, the following provisions shall apply:
  - a when it is not intended to land, the State from which the person is to be transferred may notify the State over whose territory the flight is to be made that the person concerned is being transferred in application of this Convention. In the case of an unscheduled landing such notification shall have the effect of a request for provisional arrest as provided for in Article 32, paragraph 2, and a formal request for transit shall be made;
  - b where it is intended to land, a formal request for transit shall be made.

#### **Article 14**

Contracting States shall not claim from each other the refund of any expenses resulting from the application of this Convention.

### *Section 2 – Requests for enforcement*

#### **Article 15**

- 1 All requests specified in this Convention shall be made in writing. They, and all communications necessary for the application of this Convention, shall be sent either by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State or, if the Contracting States so agree, direct by the authorities of the requesting State to those of the requested State; they shall be returned by the same channel.
- 2 In urgent cases, requests and communications may be sent through the International Criminal Police Organisation (Interpol).
- 3 Any Contracting State may, by declaration addressed to the Secretary General of the Council of Europe, give notice of its intention to adopt other rules in regard to the communications referred to in paragraph 1 of this article.

#### **Article 16**

The request for enforcement shall be accompanied by the original, or a certified copy, of the decision whose enforcement is requested and all other necessary documents. The original, or a certified copy, of all or part of the criminal file shall be sent to the requested State, if it so requires. The competent authority of the requesting State shall certify the sanction enforceable.

#### **Article 17**

If the requested State considers that the information supplied by the requesting State is not adequate to enable it to apply this Convention, it shall ask for the necessary additional information. It may prescribe a date for the receipt of such information.

#### **Article 18**

- 1 The authorities of the requested State shall promptly inform those of the requesting State of the action taken on the request for enforcement.
- 2 The authorities of the requested State shall, where appropriate, transmit to those of the requesting State a document certifying that the sanction has been enforced.

#### **Article 19**

- 1 Subject to paragraph 2 of this article, no translation of requests or of supporting documents shall be required.
- 2 Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, by declaration addressed to the Secretary General of the Council of Europe, reserve the right to require that requests and supporting documents be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of those languages as it shall indicate. The other Contracting States may claim reciprocity.
- 3 This article shall be without prejudice to any provisions concerning translation of requests and supporting documents that may be contained in agreements or arrangements now in force or that may be concluded between two or more Contracting States.

#### **Article 20**

Evidence and documents transmitted in application of this Convention need not be authenticated.

### *Section 3 – Judgments rendered in absentia and ordonnances pénales*

#### **Article 21**

- 1 Unless otherwise provided in this Convention, enforcement of judgments rendered *in absentia* and of *ordonnances pénales* shall be subject to the same rules as enforcement of other judgments.
- 2 Except as provided in paragraph 3, a judgment *in absentia* for the purposes of this Convention means any judgment rendered by a court in a Contracting State after criminal proceedings at the hearing of which the sentenced person was not personally present.
- 3 Without prejudice to Articles 25, paragraph 2, 26, paragraph 2, and 29, the following shall be considered as judgments rendered after a hearing of the accused:

- a any judgment *in absentia* and any *ordonnance pénale* which have been confirmed or pronounced in the sentencing State after opposition by the person sentenced;
- b any judgment rendered *in absentia* on appeal, provided that the appeal from the judgment of the court of first instance was lodged by the person sentenced.

#### **Article 22**

Any judgment rendered *in absentia* and any *ordonnances pénales* which have not yet been the subject of appeal or opposition may, as soon as they have been rendered, be transmitted to the requested State for the purpose of notification and with a view to enforcement.

#### **Article 23**

- 1 If the requested State sees fit to take action on the request to enforce a judgment rendered *in absentia* or an *ordonnance pénale*, it shall cause the person sentenced to be personally notified of the decision rendered in the requesting State.
- 2 In the notification to the person sentenced information shall also be given:
  - a that a request for enforcement has been presented in accordance with this Convention;
  - b that the only remedy available is an opposition as provided for in Article 24 of this Convention;
  - c that the opposition must be lodged with such authority as may be specified; that for the purposes of its admissibility the opposition is subject to the provisions of Article 24 of this Convention and that the person sentenced may ask to be heard by the authorities of the sentencing State;
  - d that, if no opposition is lodged within the prescribed period, the judgment will, for the entire purposes of this Convention, be considered as having been rendered after a hearing of the accused.
- 3 A copy of the notification shall be sent promptly to the authority which requested enforcement.

#### **Article 24**

- 1 After notice of the decision has been served in accordance with Article 23, the only remedy available to the person sentenced shall be an opposition. Such opposition shall be examined, as the person sentenced chooses, either by the competent court in the requesting State or by that in the requested State. If the person sentenced expresses no choice, the opposition shall be examined by the competent court in the requested State.



- 2 In the cases specified in the preceding paragraph, the opposition shall be admissible if it is lodged with the competent authority of the requested State within a period of 30 days from the date on which the notice was served. This period shall be reckoned in accordance with the relevant rules of the law of the requested State. The competent authority of that State shall promptly notify the authority which made the request for enforcement.

#### **Article 25**

- 1 If the opposition is examined in the requesting State, the person sentenced shall be summoned to appear in that State at the new hearing of the case. Notice to appear shall be personally served not less than 21 days before the new hearing. This period may be reduced with the consent of the person sentenced. The new hearing shall be held before the court which is competent in the requesting State and in accordance with the procedure of that State.
- 2 If the person sentenced fails to appear personally or is not represented in accordance with the law of the requesting State, the court shall declare the opposition null and void and its decision shall be communicated to the competent authority of the requested State. The same procedure shall be followed if the court declares the opposition inadmissible. In both cases, the judgment rendered *in absentia* or the *ordonnance pénale* shall, for the entire purposes of this Convention, be considered as having been rendered after a hearing of the accused.
- 3 If the person sentenced appears personally or is represented in accordance with the law of the requesting State and if the opposition is declared admissible, the request for enforcement shall be considered as null and void.

#### **Article 26**

- 1 If the opposition is examined in the requested State the person sentenced shall be summoned to appear in that State at the new hearing of the case. Notice to appear shall be personally served not less than 21 days before the new hearing. This period may be reduced with the consent of the person sentenced. The new hearing shall be held before the court which is competent in the requested State and in accordance with the procedure of that State.
- 2 If the person sentenced fails to appear personally or is not represented in accordance with the law of the requested State, the court shall declare the opposition null and void. In that event, and if the court declares the opposition inadmissible, the judgment rendered *in absentia* or the *ordonnance pénale* shall, for the entire purposes of this Convention, be considered as having been rendered after a hearing of the accused.

- 3 If the person sentenced appears personally or is represented in accordance with the law of the requested State, and if the opposition is admissible, the act shall be tried as if it had been committed in that State. Preclusion of proceedings by reason of lapse of time shall, however, in no circumstances be examined. The judgment rendered in the requesting State shall be considered null and void.
- 4 Any step with a view to proceedings or a preliminary enquiry, taken in the sentencing State in accordance with its law and regulations, shall have the same validity in the requested State as if it had been taken by the authorities of that State, provided that assimilation does not give such steps a greater evidential weight than they have in the requesting State.

#### **Article 27**

For the purpose of lodging an opposition and for the purpose of the subsequent proceedings, the person sentenced *in absentia* or by an *ordonnance pénale* shall be entitled to legal assistance in the cases and on the conditions prescribed by the law of the requested State and, where appropriate, of the requesting State.

#### **Article 28**

Any judicial decisions given in pursuance of Article 26, paragraph 3, and enforcement thereof, shall be governed solely by the law of the requested State.

#### **Article 29**

If the person sentenced *in absentia* or by an *ordonnance pénale* lodges no opposition, the decision shall, for the entire purposes of this Convention, be considered as having been rendered after the hearing of the accused.

#### **Article 30**

National legislations shall be applicable in the matter of reinstatement if the sentenced person, for reasons beyond his control, failed to observe the time-limits laid down in Articles 24, 25 and 26 or to appear personally at the hearing fixed for the new examination of the case.

### *Section 4 – Provisional measures*

#### **Article 31**

If the sentenced person is present in the requesting State after notification of the acceptance of its request for enforcement of a sentence involving deprivation of liberty is received, that State may, if it deems it necessary in order to ensure enforcement, arrest him with a view to his transfer under the provisions of Article 43.

### **Article 32**

- 1 When the requesting State has requested enforcement, the requested State may arrest the person sentenced:
  - a if, under the law of the requested State, the offence is one which justifies remand in custody, and
  - b if there is a danger of abscondence or, in case of a judgment rendered *in absentia*, a danger of secretion of evidence.
- 2 When the requesting State announces its intention to request enforcement, the requested State may, on application by the requesting State arrest the person sentenced, provided that requirements under a and b of the preceding paragraph are satisfied. The said application shall state the offence which led to the judgment and the time and place of its perpetration, and contain as accurate a description as possible of the person sentenced. It shall also contain a brief statement of the facts on which the judgment is based.

### **Article 33**

- 1 The person sentenced shall be held in custody in accordance with the law of the requested State; the law of that State shall also determine the conditions on which he may be released.
- 2 The person in custody shall in any event be released:
  - a after a period equal to the period of deprivation of liberty imposed in the judgment;
  - b if he was arrested in pursuance of Article 32, paragraph 2, and the requested State did not receive, within 18 days from the date of the arrest, the request together with the documents specified in Article 16.

### **Article 34**

- 1 A person held in custody in the requested State in pursuance of Article 32 who is summoned to appear before the competent court in the requesting State in accordance with Article 25 as a result of the opposition he has lodged, shall be transferred for that purpose to the territory of the requesting State.
- 2 After transfer, the said person shall not be kept in custody by the requesting State if the condition set out in Article 33, paragraph 2.a, is met or if the requesting State does not request enforcement of a further sentence. The person shall be promptly returned to the requested State unless he has been released.

### **Article 35**

- 1 A person summoned before the competent court of the requesting State as a result of the opposition he has lodged shall not be proceeded

against, sentenced or detained with a view to the carrying out of a sentence or detention order nor shall he for any other reason be restricted in his personal freedom for any act or offence which took place prior to his departure from the territory of the requested State and which is not specified in the summons unless he expressly consents in writing. In the case referred to in Article 34, paragraph 1, a copy of the statement of consent shall be sent to the State from which he has been transferred.

- 2 The effects provided for in the preceding paragraph shall cease when the person summoned, having had the opportunity to do so, has not left the territory of the requesting State during 15 days after the date of the decision following the hearing for which he was summoned to appear or if he returns to that territory after leaving it without being summoned anew.

#### **Article 36**

- 1 If the requesting State has requested enforcement of a confiscation of property, the requested State may provisionally seize the property in question, on condition that its own law provides for seizure in respect of similar facts.
- 2 Seizure shall be carried out in accordance with the law of the requested State which shall also determine the conditions on which the seizure may be lifted.

### *Section 5 – Enforcement of sanctions*

#### *a – General clauses*

#### **Article 37**

A sanction imposed in the requesting State shall not be enforced in the requested State except by a decision of the court of the requested State. Each Contracting State may, however, empower other authorities to take such decisions if the sanction to be enforced is only a fine or a confiscation and if these decisions are susceptible of appeal to a court.

#### **Article 38**

The case shall be brought before the court or the authority empowered under Article 37 if the requested State sees fit to take action on the request for enforcement.

#### **Article 39**

- 1 Before a court takes a decision upon a request for enforcement the sentenced person shall be given the opportunity to state his views. Upon application he shall be heard by the court either by letters rogatory or in

person. A hearing in person must be granted following his express request to that effect.

- 2 The court may, however, decide on the acceptance of the request for enforcement in the absence of a sentenced person requesting a personal hearing if he is in custody in the requesting State. In these circumstances any decision as to the substitution of the sanction under Article 44 shall be adjourned until, following his transfer to the requested State, the sentenced person has been given the opportunity to appear before the court.

#### **Article 40**

- 1 The court, or in the cases referred to in Article 37, the authority empowered under the same article, which is dealing with the case shall satisfy itself:
  - a that the sanction whose enforcement is requested was imposed in a European criminal judgment;
  - b that the requirements of Article 4 are met;
  - c that the condition laid down in Article 6.a is not fulfilled or should not preclude enforcement;
  - d that enforcement is not precluded by Article 7;
  - e that, in case of a judgment rendered *in absentia* or an *ordonnance pénale* the requirements of Section 3 of this part are met.
- 2 Each Contracting State may entrust to the court or the authority empowered under Article 37 the examination of other conditions of enforcement provided for in this Convention.

#### **Article 41**

The judicial decisions taken in pursuance of the present section with respect to the requested enforcement and those taken on appeal from decisions by the administrative authority referred to in Article 37 shall be appealable.

#### **Article 42**

The requested State shall be bound by the findings as to the facts in so far as they are stated in the decision or in so far as it is impliedly based on them.

*b – Clauses relating specifically to enforcement of sanctions involving deprivation of liberty*

#### **Article 43**

When the sentenced person is detained in the requesting State he shall, unless the law of that State otherwise provides, be transferred to the

requested State as soon as the requesting State has been notified of the acceptance of the request for enforcement.

#### **Article 44**

- 1 If the request for enforcement is accepted, the court shall substitute for the sanction involving deprivation of liberty imposed in the requesting State a sanction prescribed by its own law for the same offence. This sanction may, subject to the limitations laid down in paragraph 2, be of a nature or duration other than that imposed in the requesting State. If this latter sanction is less than the minimum which may be pronounced under the law of the requested State, the court shall not be bound by that minimum and shall impose a sanction corresponding to the sanction imposed in the requesting State.
- 2 In determining the sanction, the court shall not aggravate the penal situation of the person sentenced as it results from the decision delivered in the requesting State.
- 3 Any part of the sanction imposed in the requesting State and any term of provisional custody, served by the person sentenced subsequent to the sentence, shall be deducted in full. The same shall apply in respect of any period during which the person sentenced was remanded in custody in the requesting State before being sentenced in so far as the law of that State so requires.
- 4 Any Contracting State may, at any time, deposit with the Secretary General of the Council of Europe a declaration which confers on it in pursuance of the present Convention the right to enforce a sanction involving deprivation of liberty of the same nature as that imposed in the requesting State even if the duration of that sanction exceeds the maximum provided for by its national law for a sanction of the same nature. Nevertheless, this rule shall only be applied in cases where the national law of this State allows, in respect of the same offence, for the imposition of a sanction of at least the same duration as that imposed in the requesting State but which is of a more severe nature. The sanction imposed under this paragraph may, if its duration and purpose so require, be enforced in a penal establishment intended for the enforcement of sanctions of another nature.

*c – Clauses relating specifically to enforcement of fines and confiscations*

#### **Article 45**

- 1 If the request for enforcement of a fine or confiscation of a sum of money is accepted, the court or the authority empowered under Article 37 shall convert the amount thereof into the currency of the requested State at the rate of exchange ruling at the time when the decision is taken. It shall thus fix the amount of the fine, or the sum to be confiscated, which shall nevertheless not exceed the maximum sum fixed by its own law for the

same offence, or failing such a maximum, shall not exceed the maximum amount customarily imposed in the requested State in respect of a like offence.

- 2 However, the court or the authority empowered under Article 37 may maintain up to the amount imposed in the requesting State the sentence of a fine or of a confiscation when such a sanction is not provided for by the law of the requested State for the same offence, but this law allows for the imposition of more severe sanctions. The same shall apply if the sanction imposed in the requesting State exceeds the maximum laid down in the law of the requested State for the same offence, but this law allows for the imposition of more severe sanctions.
- 3 Any facility as to time of payment or payment by instalments, granted in the requesting State, shall be respected in the requested State.

#### **Article 46**

- 1 When the request for enforcement concerns the confiscation of a specific object, the court or the authority empowered under Article 37 may order the confiscation of that object only in so far as such confiscation is authorised by the law of the requested State for the same offence.
- 2 However, the court or the authority empowered under Article 37 may maintain the confiscation ordered in the requesting State when this sanction is not provided for in the law of the requested State for the same offence but this law allows for the imposition of more severe sanctions.

#### **Article 47**

- 1 The proceeds of fines and confiscations shall be paid into the public funds of the requested State without prejudice to any rights of third parties.
- 2 Property confiscated which is of special interest may be remitted to the requesting State if it so requires.

#### **Article 48**

If a fine cannot be exacted, a court of the requested State may impose an alternative sanction involving deprivation of liberty in so far as the laws of both States so provide in such cases unless the requesting State expressly limited its request to exacting of the fine alone. If the court decides to impose an alternative sanction involving deprivation of liberty, the following rules shall apply:

- a If conversion of a fine into a sanction involving deprivation of liberty is already prescribed either in the sentence pronounced in the requesting State or directly in the law of that State, the court of the requested State shall determine the nature and length of such sanction in accordance with the rules laid down by its own law. If the sanction involving deprivation of liberty already prescribed in the requesting State is less

than the minimum which may be imposed under the law of the requested State, the court shall not be bound by that minimum and impose a sanction corresponding to the sanction prescribed in the requesting State. In determining the sanction the court shall not aggravate the penal situation of the person sentenced as it results from the decision delivered in the requesting State.

- b In all other cases the court of the requested State shall convert the fine in accordance with its own law, observing the limits prescribed by the law of the requesting State.

*d – Clauses relating specifically to enforcement of disqualification*

**Article 49**

- 1 Where a request for enforcement of a disqualification is made such disqualification imposed in the requesting State may be given effect in the requested State only if the law of the latter State allows for disqualification for the offence in question.
- 2 The court dealing with the case shall appraise the expediency of enforcing the disqualification in the territory of its own State.

**Article 50**

- 1 If the court orders enforcement of the disqualification it shall determine the duration thereof within the limits prescribed by its own law, but may not exceed the limits laid down in the sentence imposed in the requesting State.
- 2 The court may order the disqualification to be enforced in respect of some only of the rights whose loss or suspension has been pronounced.

**Article 51**

Article 11 shall not apply to disqualifications.

**Article 52**

The requested State shall have the right to restore to the person sentenced the rights of which he has been deprived in accordance with a decision taken in application of this section.

**Part III – International effects of European criminal judgments**

*Section 1 – Ne bis in idem*

**Article 53**

- 1 A person in respect of whom a European criminal judgment has been rendered may for the same act neither be prosecuted nor sentenced nor subjected to enforcement of a sanction in another Contracting State:



- a if he was acquitted;
  - b if the sanction imposed:
    - i has been completely enforced or is being enforced, or
    - ii has been wholly, or with respect to the part not enforced, the subject of a pardon or an amnesty, or
    - iii can no longer be enforced because of lapse of time;
  - c if the court convicted the offender without imposing a sanction.
- 2 Nevertheless, a Contracting State shall not, unless it has itself requested the proceedings, be obliged to recognise the effect of *ne bis in idem* if the act which gave rise to the judgment was directed against either a person or an institution or any thing having public status in that State, or if the subject of the judgment had himself a public status in that State.
- 3 Furthermore, any Contracting State where the act was committed or considered as such according to the law of that State shall not be obliged to recognise the effect of *ne bis in idem* unless that State has itself requested the proceedings.

#### **Article 54**

If new proceedings are instituted against a person who in another Contracting State has been sentenced for the same act, then any period of deprivation of liberty arising from the sentence enforced shall be deducted from the sanction which may be imposed.

#### **Article 55**

This section shall not prevent the application of wider domestic provisions relating to the effect of *ne bis in idem* attached to foreign criminal judgments.

### *Section 2 – Taking into consideration*

#### **Article 56**

Each Contracting State shall legislate as it deems appropriate to enable its courts when rendering a judgment to take into consideration any previous European criminal judgment rendered for another offence after a hearing of the accused with a view to attaching to this judgment all or some of the effects which its law attaches to judgments rendered in its territory. It shall determine the conditions in which this judgment is taken into consideration.

#### **Article 57**

Each Contracting State shall legislate as it deems appropriate to allow the taking into consideration of any European criminal judgment rendered after a hearing of the accused so as to enable application of all or part of

a disqualification attached by its law to judgments rendered in its territory. It shall determine the conditions in which this judgment is taken into consideration.

## **Part IV – Final provisions**

### **Article 58**

- 1 This Convention shall be open to signature by the member States represented on the Committee of Ministers of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
- 2 The Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.
- 3 In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

### **Article 59**

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto, provided that the resolution containing such invitation receives the unanimous agreement of the members of the Council who have ratified the Convention.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

### **Article 60**

- 1 Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any Contracting State may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 66 of this Convention.

#### **Article 61**

- 1 Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, declare that it avails itself of one or more of the reservations provided for in Appendix I to this Convention.
- 2 Any Contracting State may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
- 3 A Contracting State which has made a reservation in respect of any provision of this Convention may not claim the application of that provision by any other State; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

#### **Article 62**

- 1 Any Contracting State may at any time, by declaration addressed to the Secretary General of the Council of Europe, set out the legal provisions to be included in Appendices II or III to this Convention.
- 2 Any change of the national provisions listed in Appendices II or III shall be notified to the Secretary General of the Council of Europe if such a change renders the information in these appendices incorrect.
- 3 Any changes made in Appendices II or III in application of the preceding paragraphs shall take effect in each Contracting State one month after the date of their notification by the Secretary General of the Council of Europe.

#### **Article 63**

- 1 Each Contracting State shall, at the time of depositing its instrument of ratification, acceptance or accession, supply the Secretary General of the Council of Europe with relevant information on the sanctions applicable in that State and their enforcement, for the purposes of the application of this Convention.
- 2 Any subsequent change which renders the information supplied in accordance with the previous paragraph incorrect, shall also be notified to the Secretary General of the Council of Europe.

#### **Article 64**

- 1 This Convention affects neither the rights and the undertakings derived from extradition treaties and international multilateral conventions concerning special matters, nor provisions concerning matters which are dealt with in the present Convention and which are contained in other existing conventions between Contracting States.

- 2 The Contracting States may not conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, except in order to supplement its provisions or facilitate application of the principles embodied in it.
- 3 Should two or more Contracting States, however, have already established their relations in this matter on the basis of uniform legislation, or instituted a special system of their own, or should they in future do so, they shall be entitled to regulate those relations accordingly, notwithstanding the terms of this Convention.
- 4 Contracting States ceasing to apply the terms of this Convention to their mutual relations in this matter shall notify the Secretary General of the Council of Europe to that effect.

#### **Article 65**

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

#### **Article 66**

- 1 This Convention shall remain in force indefinitely.
- 2 Any Contracting State may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 3 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

#### **Article 67**

The Secretary General of the Council of Europe shall notify the member States represented on the Committee of Ministers of the Council, and any State that has acceded to this Convention, of:

- a any signature;
- b any deposit of an instrument of ratification, acceptance or accession;
- c any date of entry into force of this Convention in accordance with Article 58 thereof;
- d any declaration received in pursuance of Article 19, paragraph 2:
- e any declaration received in pursuance of Article 44, paragraph 4:
- f any declaration received in pursuance of Article 60:
- g any reservation made in pursuance of the provisions of Article 61, paragraph 1, and the withdrawal of such reservation;

- h any declaration received in pursuance of Article 62, paragraph 1, and any subsequent notification received in pursuance of that article, paragraph 2;
- i any information received in pursuance of Article 63, paragraph 1, and any subsequent notification received in pursuance of that article, paragraph 2;
- j any notification concerning the bilateral or multilateral agreements concluded in pursuance of Article 64, paragraph 2, or concerning uniform legislation introduced in pursuance of Article 64, paragraph 3;
- k any notification received in pursuance of Article 66, and the date on which denunciation takes effect.

#### **Article 68**

This Convention and the declarations and notifications authorised thereunder shall apply only to the enforcement of decisions rendered after the entry into force of the Convention between the Contracting States concerned.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, this 28th day of May 1970, in English and French, both texts being equally authoritative in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

#### **Appendix I**

Each Contracting State may declare that it reserves the right:

- a to refuse enforcement, if it considers that the sentence relates to a fiscal or religious offence;
- b to refuse enforcement of a sanction for an act which according to the law of the requested State could have been dealt with only by an administrative authority;
- c to refuse enforcement of a European criminal judgment which the authorities of the requesting State rendered on a date when, under its own law, the criminal proceedings in respect of the offence punished by the judgment would have been precluded by the lapse of time;
- d to refuse the enforcement of sanctions rendered *in absentia* and ordonnances pénales or of one of these categories of decisions only;
- e to refuse the application of the provisions of Article 8 where this State has an original competence and to recognise in these cases only the

equivalence of acts interrupting or suspending time limitation which have been accomplished in the requesting State;

- f to accept the application of Part III in respect of one of its two sections only.

## **Appendix II**

List of offences other than offences dealt with under criminal law

## **Appendix III**

List of *Ordonnances pénales*

## **Additional Protocol to the European Convention on Information on Foreign Law**

Strasbourg, 15.III.1978, ETS No. 97

The member States of the Council of Europe, signatory hereto,

Having regard to the provisions of the European Convention on Information on Foreign Law, opened for signature in London on 7 June 1968 (hereinafter referred to as the "Convention");

Considering that it is desirable to extend the system of international mutual assistance established by that Convention in the field of criminal law and procedure, in a multilateral framework open to all the Contracting Parties to the Convention;

Considering that, with a view to eliminating economic obstacles to legal proceedings and permitting persons in an economically weak position more easily to exercise their rights in member States, it is also desirable to extend the system established by the Convention to the field of legal aid and advice in civil and commercial matters;

Noting that Article 1, paragraph 2, of the Convention provides that two or more Contracting Parties may decide to extend as between themselves the scope of the Convention to fields other than those referred to in the Convention;

Noting that Article 3, paragraph 3, of the Convention provides that two or more Contracting Parties may decide to extend as between themselves the Convention to requests from authorities other than judicial authorities,

Have agreed as follows:

### **Chapter I**

#### **Article 1**

The Contracting Parties undertake to supply one another, in accordance with the provisions of the Convention, with information on their substantive and procedural law and judicial organisation in the criminal field, including prosecuting authorities, as well as on the law concerning the enforcement of penal measures. This undertaking applies to all proceedings in respect of offences the prosecution of which, at the time of the request for information, falls within the jurisdiction of the judicial authorities of the requesting Party.

## **Article 2**

A request for information on questions in the field referred to in Article 1 may:

- a emanate not only from a court, but from any judicial authority having jurisdiction to prosecute offences or execute sentences that have been imposed with final and binding effect; and
- b be made not only where proceedings have actually been instituted, but also when the institution of proceedings is envisaged.

## **Chapter II**

### **Article 3**

Within the framework of the undertaking contained in Article 1, paragraph 1 of the Convention, the Contracting Parties agree that requests for information may:

- a emanate not only from a judicial authority but also from any authority or person acting within official systems of legal aid or legal advice on behalf of persons in an economically weak position;
- b be made not only where proceedings have actually been instituted but also when the institution of proceedings is envisaged.

### **Article 4**

- 1 Each Contracting Party which has not set up or appointed one or more bodies to act as a transmitting agency as provided for in Article 2, paragraph 2 of the Convention, shall set up or appoint such an agency or agencies for the purpose of transmitting any request for information in accordance with Article 3 of this Protocol to the competent foreign receiving agency.
- 2 Each Contracting Party shall communicate to the Secretary General of the Council of Europe the name and address of the transmitting agency or agencies set up or appointed in accordance with the preceding paragraph.

## **Chapter III**

### **Article 5**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it will only be bound by one or the other of Chapters I and II of this Protocol.
- 2 Any State having made such a declaration may, at any subsequent time, declare by means of a notification addressed to the Secretary General of the Council of Europe that it will be bound by the provisions of both Chapters I and II. Such notification shall take effect from the date of its reception.



- 3 Any Contracting Party which is bound by the provisions of both Chapters I and II may at any time declare by means of a notification addressed to the Secretary General of the Council of Europe that it will only be bound by one or the other of Chapters I and II. Such notification shall take effect six months after the date of the receipt of such notification.
- 4 The provisions of Chapter I or II, as the case may be, shall be applicable only between Contracting Parties which are bound by the Chapter in question.

#### **Article 6**

- 1 This Protocol shall be open to signature by the member States of the Council of Europe, signatory to the Convention, who may become Parties to it either by:
  - a signature without reservation in respect of ratification, acceptance or approval;
  - b signature with reservation in respect of ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 A member State of the Council of Europe may not sign this Protocol without reservation in respect of ratification, acceptance or approval, nor ratify, accept or approve it, unless it has, simultaneously or previously, ratified or accepted the Convention.

#### **Article 7**

- 1 This Protocol shall enter into force three months after the date on which three member States of the Council of Europe shall have become Parties to the Protocol in accordance with the provisions of Article 6.
- 2 In the case of any member State which shall subsequently sign the Protocol without reservation in respect of ratification, acceptance or approval or which shall ratify, accept or approve it, the Protocol shall enter into force three months after the date of such signature or after the date of deposit of the instrument of ratification, acceptance or approval.

#### **Article 8**

- 1 After the entry into force of this Protocol, any State which has acceded, or has been invited to accede, to the Convention, may be invited by the Committee of Ministers to accede also to this Protocol.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

#### **Article 9**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
- 2 Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for those international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect six months after the date of receipt by the Secretary General of the Council of Europe of the notification.

#### **Article 10**

- 1 Any Contracting Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall take effect six months after the date of receipt by the Secretary General of the Council of Europe of such notification.
- 3 Denunciation of the Convention shall automatically entail denunciation of this Protocol.

#### **Article 11**

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

- a any signature without reservation in respect of ratification, acceptance or approval;
- b any signature with reservation in respect of ratification, acceptance or approval;
- c any deposit of an instrument of ratification, acceptance, approval or accession;
- d any date of entry into force of this Protocol in accordance with Article 7 thereof;
- e any notification received in pursuance of the provisions of Article 4;
- f any declaration or notification received in pursuance of the provisions of Article 5;

- g any declaration received in pursuance of the provisions of Article 9 and any withdrawal of any such declaration;
- h any notification received in pursuance of the provisions of Article 10 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 15th day of March 1978, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.



# European Convention on the Compensation of Victims of Violent Crimes

Strasbourg, 24.XI.1983, ETS No. 116

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that for reasons of equity and social solidarity it is necessary to deal with the situation of victims of intentional crimes of violence who have suffered bodily injury or impairment of health and of dependants of persons who have died as a result of such crimes;

Considering that it is necessary to introduce or develop schemes for the compensation of these victims by the State in whose territory such crimes were committed, in particular when the offender has not been identified or is without resources;

Considering that it is necessary to establish minimum provisions in this field;

Having regard to Resolution (77) 27 of the Committee of Ministers of the Council of Europe on the compensation of victims of crime,

Have agreed as follows:

## Part I – Basic principles

### Article 1

The Parties undertake to take the necessary steps to give effect to the principles set out in Part I of this Convention.

### Article 2

- 1 When compensation is not fully available from other sources the State shall contribute to compensate:
  - a those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence;
  - b the dependants of persons who have died as a result of such crime.
- 2 Compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished.

### **Article 3**

Compensation shall be paid by the State on whose territory the crime was committed:

- a to nationals of the States party to this Convention;
- b to nationals of all member States of the Council of Europe who are permanent residents in the State on whose territory the crime was committed.

### **Article 4**

Compensation shall cover, according to the case under consideration, at least the following items: loss of earnings, medical and hospitalisation expenses and funeral expenses, and, as regards dependants, loss of maintenance.

### **Article 5**

The compensation scheme may, if necessary, set for any or all elements of compensation an upper limit above which and a minimum threshold below which such compensation shall not be granted.

### **Article 6**

The compensation scheme may specify a period within which any application for compensation must be made.

### **Article 7**

Compensation may be reduced or refused on account of the applicant's financial situation.

### **Article 8**

- 1 Compensation may be reduced or refused on account of the victim's or the applicant's conduct before, during or after the crime, or in relation to the injury or death.
- 2 Compensation may also be reduced or refused on account of the victim's or the applicant's involvement in organised crime or his membership of an organisation which engages in crimes of violence.
- 3 Compensation may also be reduced or refused if an award or a full award would be contrary to a sense of justice or to public policy (*ordre public*).

### **Article 9**

With a view to avoiding double compensation, the State or the competent authority may deduct from the compensation awarded or reclaim from the person compensated any amount of money received, in consequence of

the injury or death, from the offender, social security or insurance, or coming from any other source.

#### **Article 10**

The State or the competent authority may be subrogated to the rights of the person compensated for the amount of the compensation paid.

#### **Article 11**

Each Party shall take appropriate steps to ensure that information about the scheme is available to potential applicants.

### **Part II – International co-operation**

#### **Article 12**

Subject to the application of bilateral or multilateral agreements on mutual assistance concluded between Contracting States, the competent authorities of each Party shall, at the request of the appropriate authorities of any other Party, give the maximum possible assistance in connection with the matters covered by this Convention. To this end, each Contracting State shall designate a central authority to receive, and to take action on, requests for such assistance, and shall inform thereof the Secretary General of the Council of Europe when depositing its instrument of ratification, acceptance, approval or accession.

#### **Article 13**

- 1 The European Committee on Crime Problems (CDPC) of the Council of Europe shall be kept informed regarding the application of the Convention.
- 2 To this end, each Party shall transmit to the Secretary General of the Council of Europe any relevant information about its legislative or regulatory provisions concerning the matters covered by the Convention.

### **Part III – Final clauses**

#### **Article 14**

This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

#### **Article 15**

- 1 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which

three member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 14.

- 2 In respect of any member State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

#### **Article 16**

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
- 2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### **Article 17**

- 1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

#### **Article 18**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more reservations.



- 2 Any Contracting State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.
- 3 A Party which has made a reservation in respect of a provision of this Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

#### **Article 19**

- 1 Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such a denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

#### **Article 20**

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention, of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 15, 16 and 17;
- d any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 24th day of November 1983, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Convention.



# **Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances**

Strasbourg, 31.I.1995, ETS No. 156

The member States of the Council of Europe, having expressed their consent to be bound by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988, hereinafter referred to as "The Vienna Convention",

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Convinced of the need to pursue a common criminal policy aimed at the protection of society;

Considering that the fight against serious crime, which has become an increasingly international problem, calls for close co-operation on an international scale;

Desiring to increase their co-operation to the fullest possible extent in the suppression of illicit traffic in narcotic drugs and psychotropic substances by sea, in conformity with the international law of the sea and in full respect of the principle of right of freedom of navigation;

Considering, therefore, that Article 17 of the Vienna Convention should be supplemented by a regional agreement to carry out, and to enhance the effectiveness of the provisions of that article,

Have agreed as follows:

## **Chapter I – Definitions**

### **Article 1 – Definitions**

For the purposes of this Agreement:

- a "Intervening State" means a State Party which has requested or proposes to request authorisation from another Party to take action under this Agreement in relation to a vessel flying the flag or displaying the marks of registry of that other State Party;
- b "Preferential jurisdiction" means, in relation to a flag State having concurrent jurisdiction over a relevant offence with another State, the

right to exercise its jurisdiction on a priority basis, to the exclusion of the exercise of the other State's jurisdiction over the offence;

- c "Relevant offence" means any offence of the kind described in Article 3, paragraph 1, of the Vienna Convention;
- d "Vessel" means a ship or any other floating craft of any description, including hovercrafts and submersible crafts.

## **Chapter II – International co-operation**

### *Section 1 – General provisions*

#### **Article 2 – General principles**

- 1 The Parties shall co-operate to the fullest extent possible to suppress illicit traffic in narcotic drugs and psychotropic substances by sea, in conformity with the international law of the sea.
- 2 In the implementation of this Agreement the Parties shall endeavour to ensure that their actions maximise the effectiveness of law enforcement measures against illicit traffic in narcotic drugs and psychotropic substances by sea.
- 3 Any action taken in pursuance of this Agreement shall take due account of the need not to interfere with or affect the rights and obligations of and the exercise of jurisdiction by coastal States, in accordance with the international law of the sea.
- 4 Nothing in this Agreement shall be so construed as to infringe the principle of non bis in idem, as applied in national law.
- 5 The Parties recognise the value of gathering and exchanging information concerning vessels, cargo and facts, whenever they consider that such exchange of information could assist a Party in the suppression of illicit traffic in narcotic drugs and psychotropic substances by sea.
- 6 Nothing in this Agreement affects the immunities of warships and other government vessels operated for non-commercial purposes.

#### **Article 3 – Jurisdiction**

- 1 Each Party shall take such measures as may be necessary to establish its jurisdiction over the relevant offences when the offence is committed on board a vessel flying its flag.
- 2 For the purposes of applying this Agreement, each Party shall take such measures as may be necessary to establish its jurisdiction over the relevant offences committed on board a vessel flying the flag or displaying the marks of registry or bearing any other indication of nationality of any other Party to this Agreement. Such jurisdiction shall be exercised only in conformity with this Agreement.

- 3 For the purposes of applying this Agreement, each Party shall take such measures as may be necessary to establish its jurisdiction over the relevant offences committed on board a vessel which is without nationality, or which is assimilated to a vessel without nationality under international law.
- 4 The flag State has preferential jurisdiction over any relevant offence committed on board its vessel.
- 5 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later date, by a declaration addressed to the Secretary General of the Council of Europe, inform the other Parties to the agreement of the criteria it intends to apply in respect of the exercise of the jurisdiction established pursuant to paragraph 2 of this article.
- 6 Any State which does not have in service warships, military aircraft or other government ships or aircraft operated for non-commercial purposes, which would enable it to become an intervening State under this Agreement may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe declare that it will not apply paragraphs 2 and 3 of this Article. A State which has made such a declaration is under the obligation to withdraw it when the circumstances justifying the reservation no longer exist.

#### **Article 4 – Assistance to flag States**

- 1 A Party which has reasonable grounds to suspect that a vessel flying its flag is engaged in or being used for the commission of a relevant offence, may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.
- 2 In making its request, the flag State may, *inter alia*, authorise the requested Party, subject to any conditions or limitations which may be imposed, to take some or all of the actions specified in this Agreement.
- 3 When the requested Party agrees to act upon the authorisation of the flag State given to it in accordance with paragraph 2, the provisions of this Agreement in respect of the rights and obligations of the intervening State and the flag State shall, where appropriate and unless otherwise specified, apply to the requested and requesting Party, respectively.

#### **Article 5 – Vessels without nationality**

- 1 A Party which has reasonable grounds to suspect that a vessel without nationality, or assimilated to a vessel without nationality under international law, is engaged in or being used for the commission of a relevant offence, shall inform such other Parties as appear most closely affected

and may request the assistance of any such Party in suppressing its use for that purpose. The Party so requested shall render such assistance within the means available to it.

- 2 Where a Party, having received information in accordance with paragraph 1, takes action it shall be for that Party to determine what actions are appropriate and to exercise its jurisdiction over any relevant offences which may have been committed by any persons on board the vessel.
- 3 Any Party which has taken action under this article shall communicate as soon as possible to the Party which has provided information, or made a request for assistance, the results of any action taken in respect of the vessel and any persons on board.

## *Section 2 – Authorisation procedures*

### **Article 6 – Basic rules on authorisation**

Where the intervening State has reasonable grounds to suspect that a vessel, which is flying the flag or displaying the marks of registry of another Party or bears any other indications of nationality of the vessel, is engaged in or being used for the commission of a relevant offence, the intervening State may request the authorisation of the flag State to stop and board the vessel in waters beyond the territorial sea of any Party, and to take some or all of the other actions specified in this Agreement. No such actions may be taken by virtue of this Agreement, without the authorisation of the flag State.

### **Article 7 – Decision on the request for authorisation**

The flag State shall immediately acknowledge receipt of a request for authorisation under Article 6 and shall communicate a decision thereon as soon as possible and, wherever practicable, within four hours of receipt of the request.

### **Article 8 – Conditions**

- 1 If the flag State grants the request, such authorisation may be made subject to conditions or limitations. Such conditions or limitations may, in particular, provide that the flag State's express authorisation be given before any specified steps are taken by the intervening State.
- 2 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe declare that, when acting as an intervening State, it may subject its intervention to the condition that persons having its nationality who are surrendered to the flag State under Article 15 and there convicted of a relevant offence, shall have the possibility to be transferred to the intervening State to serve the sentence imposed.

### *Section 3 – Rules governing action*

#### **Article 9 – Authorised actions**

- 1 Having received the authorisation of the flag State, and subject to the conditions or limitations, if any, made under Article 8, paragraph 1, the intervening State may take the following actions:
  - i
    - a stop and board the vessel;
    - b establish effective control of the vessel and over any person thereon;
    - c take any action provided for in sub-paragraph ii of this article which is considered necessary to establish whether a relevant offence has been committed and to secure any evidence thereof;
    - d require the vessel and any persons thereon to be taken into the territory of the intervening State and detain the vessel there for the purpose of carrying out further investigations;
  - ii and, having established effective control of the vessel:
    - a search the vessel, anyone on it and anything in it, including its cargo;
    - b open or require the opening of any containers, and test or take samples of anything on the vessel;
    - c require any person on the vessel to give information concerning himself or anything on the vessel;
    - d require the production of documents, books or records relating to the vessel or any persons or objects on it, and make photographs or copies of anything the production of which the competent authorities have the power to require;
    - e seize, secure and protect any evidence or material discovered on the vessel.
- 2 Any action taken under paragraph 1 of this article shall be without prejudice to any right existing under the law of the intervening State of suspected persons not to incriminate themselves.

#### **Article 10 – Enforcement measures**

- 1 Where, as a result of action taken under Article 9, the intervening State has evidence that a relevant offence has been committed which would be sufficient under its laws to justify its either arresting the persons concerned or detaining the vessel, or both, it may so proceed.
- 2 The intervening State shall, without delay, notify the flag State of steps taken under paragraph 1 above.
- 3 The vessel shall not be detained for a period longer than that which is strictly necessary to complete the investigations into relevant offences. Where there are reasonable grounds to suspect that the owners of the

vessel are directly involved in a relevant offence, the vessel and its cargo may be further detained on completion of the investigation. Persons not suspected of any relevant offence and objects not required as evidence shall be released.

- 4 Notwithstanding the provisions of the preceding paragraph, the intervening State and the flag State may agree with a third State, Party to this Agreement, that the vessel may be taken to the territory of that third State and, once the vessel is in that territory, the third State shall be treated for the purposes of this Agreement as an intervening State.

#### **Article 11 – Execution of action**

- 1 Actions taken under Articles 9 and 10 shall be governed by the law of the intervening State.
- 2 Actions under Article 9, paragraph 1 a, b and d, shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorised to that effect.
- 3
  - a An official of the intervening State may not be prosecuted in the flag State for any act performed in the exercise of his functions. In such a case, the official shall be liable to prosecution in the intervening State as if the elements constituting the offence had been committed within the jurisdiction of that State.
  - b In any proceedings instituted in the flag State, offences committed against an official of the intervening State with respect to actions carried out under Articles 9 and 10 shall be treated as if they had been committed against an official of the flag State.
- 4 The master of a vessel which has been boarded in accordance with this Agreement shall be entitled to communicate with the authorities of the vessel's flag State as well as with the owners or operators of the vessel for the purpose of notifying them that the vessel has been boarded. However, the authorities of the intervening State may prevent or delay any communication with the owners or operators of the vessel if they have reasonable grounds for believing that such communication would obstruct the investigations into a relevant offence.

#### **Article 12 – Operational safeguards**

- 1 In the application of this Agreement, the Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and cargo and not to prejudice any commercial or legal interest. In particular, they shall take into account:
  - a the dangers involved in boarding a vessel at sea, and give consideration to whether this could be more safely done at the vessel's next port of call;
  - b the need to minimise any interference with the legitimate commercial activities of a vessel;



- c the need to avoid unduly detaining or delaying a vessel;
  - d the need to restrict the use of force to the minimum necessary to ensure compliance with the instructions of the intervening State.
- 2 The use of firearms against, or on, the vessel shall be reported as soon as possible to the flag State.
  - 3 The death, or injury, of any person aboard the vessel shall be reported as soon as possible to the flag State. The authorities of the intervening State shall fully co-operate with the authorities of the flag State in any investigation the flag State may hold into any such death or injury.

#### *Section 4 – Rules governing the exercise of jurisdiction*

##### **Article 13 – Evidence of offences**

- 1 To enable the flag State to decide whether to exercise its preferential jurisdiction in accordance with the provisions of Article 14, the intervening State shall without delay transmit to the flag State a summary of the evidence of any offences discovered as a result of action taken pursuant to Article 9. The flag State shall acknowledge receipt of the summary forthwith.
- 2 If the intervening State discovers evidence which leads it to believe that offences outside the scope of this Agreement may have been committed, or that suspect persons not involved in relevant offences are on board the vessel, it shall notify the flag State. Where appropriate, the Parties involved shall consult.
- 3 The provisions of this Agreement shall be so construed as to permit the intervening State to take measures, including the detention of persons, other than those aimed at the investigation and prosecution of relevant offences, only when:
  - a the flag State gives its express consent; or
  - b such measures are aimed at the investigation and prosecution of an offence committed after the person has been taken into the territory of the intervening State.

##### **Article 14 – Exercise of preferential jurisdiction**

- 1 A flag State wishing to exercise its preferential jurisdiction shall do so in accordance with the provisions of this article.
- 2 It shall notify the intervening State to this effect as soon as possible and at the latest within fourteen days from the receipt of the summary of evidence pursuant to Article 13. If the flag State fails to do this, it shall be deemed to have waived the exercise of its preferential jurisdiction.
- 3 Where the flag State has notified the intervening State that it exercises its preferential jurisdiction, the exercise of the jurisdiction of the intervening

State shall be suspended, save for the purpose of surrendering persons, vessels, cargoes and evidence in accordance with this Agreement.

- 4 The flag State shall submit the case forthwith to its competent authorities for the purpose of prosecution.
- 5 Measures taken by the intervening State against the vessel and persons on board may be deemed to have been taken as part of the procedure of the flag State.

#### **Article 15 – Surrender of vessels, cargoes, persons and evidence**

- 1 Where the flag State has notified the intervening State of its intention to exercise its preferential jurisdiction, and if the flag State so requests, the persons arrested, the vessel, the cargo and the evidence seized shall be surrendered to that State in accordance with the provisions of this Agreement.
- 2 The request for the surrender of arrested persons shall be supported by, in respect of each person, the original or a certified copy of the warrant of arrest or other order having the same effect, issued by a judicial authority in accordance with the procedure prescribed by the law of the flag State.
- 3 The Parties shall use their best endeavours to expedite the surrender of persons, vessels, cargoes and evidence.
- 4 Nothing in this Agreement shall be so construed as to deprive any detained person of his right under the law of the intervening State to have the lawfulness of his detention reviewed by a court of that State, in accordance with procedures established by its national law.
- 5 Instead of requesting the surrender of the detained persons or of the vessel, the flag State may request their immediate release. Where this request has been made, the intervening State shall release them forthwith.

#### **Article 16 – Capital punishment**

If any offence for which the flag State decides to exercise its preferential jurisdiction in accordance with Article 14 is punishable by death under the law of that State, and if in respect of such an offence the death penalty is not provided by the law of the intervening State or is not normally carried out, the surrender of any person may be refused unless the flag State gives such assurances as the intervening State considers sufficient that the death penalty will not be carried out.

### *Section 5 – Procedural and other general rules*

#### **Article 17 – Competent authorities**

- 1 Each Party shall designate an authority, which shall be responsible for sending and answering requests under Articles 6 and 7 of this

Agreement. So far as is practicable, each Party shall make arrangements so that this authority may receive and respond to the requests at any hour of any day or night.

- 2 The Parties shall furthermore designate a central authority which shall be responsible for the notification of the exercise of preferential jurisdiction under Article 14 and for all other communications or notifications under this Agreement.
- 3 Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of this article, together with any other information facilitating communication under this Agreement. Any subsequent change with respect to the name, address or other relevant information concerning such authorities shall likewise be communicated to the Secretary General.

#### **Article 18 – Communication between designated authorities**

- 1 The authorities designated under Article 17 shall communicate directly with one another.
- 2 Where, for any reason, direct communication is not practicable, Parties may agree to use the communication channels of ICPO-Interpol or of the Customs Co-operation Council.

#### **Article 19 – Form of request and languages**

- 1 All communications under Articles 4 to 16 shall be made in writing. Modern means of telecommunications, such as telefax, may be used.
- 2 Subject to the provisions of paragraph 3 of this article, translations of the requests, other communications and supporting documents shall not be required.
- 3 At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, any Party may communicate to the Secretary General of the Council of Europe a declaration that it reserves the right to require that requests, other communications and supporting documents sent to it, be made in or accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language as it may specify. The other Parties may apply the reciprocity rule.

#### **Article 20 – Authentication and legalisation**

Documents transmitted in application of this Agreement shall be exempt from all authentication and legalisation formalities.

#### **Article 21 – Content of request**

A request under Article 6 shall specify:

- a the authority making the request and the authority carrying out the investigations or proceedings;
- b details of the vessel concerned, including, as far as possible, its name, a description of the vessel, any marks of registry or other signs indicating nationality, as well as its location, together with a request for confirmation that the vessel has the nationality of the requested Party;
- c details of the suspected offences, together with the grounds for suspicion;
- d the action it is proposed to take and an assurance that such action would be taken if the vessel concerned had been flying the flag of the intervening State.

#### **Article 22 – Information for owners and masters of vessels**

Each Party shall take such measures as may be necessary to inform the owners and masters of vessels flying their flag that States Parties to this Agreement may be granted the authority to board vessels beyond the territorial sea of any Party for the purposes specified in this Agreement and to inform them in particular of the obligation to comply with instructions given by a boarding party from an intervening State exercising that authority.

#### **Article 23 – Restriction of use**

The flag State may make the authorisation referred to in Article 6 subject to the condition that the information or evidence obtained will not, without its prior consent, be used or transmitted by the authorities of the intervening State in respect of investigations or proceedings other than those relating to relevant offences.

#### **Article 24 – Confidentiality**

The Parties concerned shall, if this is not contrary to the basic principles of their national law, keep confidential any evidence and information provided by another Party in pursuance of this Agreement, except to the extent that its disclosure is necessary for the application of the Agreement or for any investigations or proceedings.

### *Section 6 – Costs and damages*

#### **Article 25 – Costs**

- 1 Unless otherwise agreed by the Parties concerned, the cost of carrying out any action under Articles 9 and 10 shall be borne by the intervening

State, and the cost of carrying out action under Articles 4 and 5 shall normally be borne by the Party which renders assistance.

- 2 Where the flag State has exercised its preferential jurisdiction in accordance with Article 14, the cost of returning the vessel and of transporting suspected persons and evidence shall be borne by it.

#### Article 26 – Damages

- 1 If, in the process of taking action pursuant to Articles 9 and 10 above, any person, whether natural or legal, suffers loss, damage or injury as a result of negligence or some other fault attributable to the intervening State, it shall be liable to pay compensation in respect thereof.
- 2 Where the action is taken in a manner which is not justified by the terms of this Agreement, the intervening State shall be liable to pay compensation for any resulting loss, damage or injury. The intervening State shall also be liable to pay compensation for any such loss, damage or injury, if the suspicions prove to be unfounded and provided that the vessel boarded, the operator or the crew have not committed any act justifying them.
- 3 Liability for any damage resulting from action under Article 4 shall rest with the requesting State, which may seek compensation from the requested State where the damage was a result of negligence or some other fault attributable to that State.

### Chapter III – Final provisions

#### Article 27 – Signature and entry into force

- 1 This Agreement shall be open for signature by the member States of the Council of Europe which have already expressed their consent to be bound by the Vienna Convention. They may express their consent to be bound by this Agreement by:
  - a signature without reservation as to ratification, acceptance or approval; or
  - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Agreement shall enter into force on the first day of the month following the expiry of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Agreement in accordance with the provisions of paragraph 1.
- 4 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Agreement shall enter into force on the first

day of the month following the expiry of a period of three months after the date of its consent to be bound by the Agreement in accordance with the provisions of paragraph 1.

#### **Article 28 – Accession**

- 1 After the entry into force of this Agreement, the Committee of Ministers of the Council of Europe, after consulting the Contracting States to the Agreement, may invite any State which is not a member of the Council but which has expressed its consent to be bound by the Vienna Convention to accede to this Agreement, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
- 2 In respect of any acceding State, the Agreement shall enter into force on the first day of the month following the expiry of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### **Article 29 – Territorial application**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories in respect of which its consent to be bound to this Agreement shall apply.
- 2 Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend its consent to be bound by the present Agreement to any other territory specified in the declaration. In respect of such territory the Agreement shall enter into force on the first day of the month following the expiry of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 In respect of any territory subject to a declaration under paragraphs 1 and 2 above, authorities may be designated under Article 17, paragraphs 1 and 2.
- 4 Any declaration made under the preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiry of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 30 – Relationship to other conventions and agreements**

- 1 This Agreement shall not affect rights and undertakings deriving from the Vienna Convention or from any international multilateral conventions concerning special matters.

- 2 The Parties to the Agreement may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Agreement, for the purpose of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it and in Article 17 of the Vienna Convention.
- 3 If two or more Parties have already concluded an agreement or treaty in respect of a subject dealt with in this Agreement or have otherwise established their relations in respect of that subject, they may agree to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Agreement, if it facilitates international co-operation.

#### **Article 31 – Reservations**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more of the reservations provided for in Article 3, paragraph 6, Article 19, paragraph 3 and Article 34, paragraph 5. No other reservation may be made.
- 2 Any State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.
- 3 A Party which has made a reservation in respect of a provision of this Agreement may not claim the application of that provision by any other Party. It may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

#### **Article 32 – Monitoring committee**

- 1 After the entry into force of the present Agreement, a monitoring committee of experts representing the Parties shall be convened at the request of a Party to the Agreement by the Secretary General of the Council of Europe.
- 2 The monitoring committee shall review the working of the Agreement and make appropriate suggestions to secure its efficient operation.
- 3 The monitoring committee may decide its own procedural rules.
- 4 The monitoring committee may decide to invite States not Parties to the Agreement as well as international organisations or bodies, as appropriate, to its meetings.
- 5 Each Party shall send every second year a report on the operation of the Agreement to the Secretary General of the Council of Europe in such form and manner as may be decided by the monitoring committee or the European Committee on Crime Problems. The monitoring committee

may decide to circulate the information supplied or a report thereon to the Parties and to such international organisations or bodies as it deems appropriate.

#### **Article 33 – Amendments**

- 1 Amendments to this Agreement may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe and to every non-member State which has acceded to or has been invited to accede to the Agreement in accordance with the provisions of Article 28.
- 2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems, which shall submit to the Committee of Ministers its opinion on the proposed amendment.
- 3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the European Committee on Crime Problems, and may adopt the amendment.
- 4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
- 5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all the Parties have informed the Secretary General of their acceptance thereof.

#### **Article 34 – Settlement of disputes**

- 1 The European Committee on Crime Problems of the Council of Europe shall be kept informed of the interpretation and application of this Agreement.
- 2 In case of a dispute between Parties as to the interpretation or application of this Agreement, the Parties shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the European Committee on Crime Problems, to an arbitral tribunal whose decisions shall be binding upon the Parties, mediation, conciliation or judicial process, as agreed upon by the Parties concerned.
- 3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or on any later date, by a declaration addressed to the Secretary General of the Council of Europe, declare that, in respect of any dispute concerning the interpretation or application of this Agreement, it recognises as compulsory, without prior agreement, and subject to reciprocity, the submission of the dispute to arbitration in accordance with the procedure set out in the appendix to this Agreement.



- 4 Any dispute which has not been settled in accordance with paragraphs 2 or 3 of this article shall be referred, at the request of any one of the parties to the dispute, to the International Court of Justice for decision.
- 5 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it does not consider itself bound by paragraph 4 of this article.
- 6 Any Party having made a declaration in accordance with paragraphs 3 or 5 of this article may at any time withdraw the declaration by notification to the Secretary General of the Council of Europe.

#### **Article 35 – Denunciation**

- 1 Any Party may, at any time, denounce this Agreement by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiry of a period of three months after the date of receipt of the notification by the Secretary General.
- 3 The present Agreement shall, however, continue to remain effective in respect of any actions or proceedings based on applications or requests made during the period of its validity in respect of the denouncing Party.

#### **Article 36 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council, any State which has acceded to this Agreement and the Secretary General of the United Nations of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c the name of any authority and any other information communicated pursuant to Article 17;
- d any reservation made in accordance with Article 31, paragraph 1;
- e the date of entry into force of this Agreement in accordance with Articles 27 and 28;
- f any request made under Article 32, paragraph 1, and the date of any meeting convened under that paragraph;
- g any declaration made under Article 3, paragraphs 5 and 6, Article 8, paragraph 2, Article 19, paragraph 3 and Article 34, paragraphs 3 and 5;
- h any other act, notification or communication relating to this Agreement.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Strasbourg, this 31st day of January 1995, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Agreement.

### **Appendix**

- 1 The Party to the dispute requesting arbitration pursuant to Article 34, paragraph 3, shall inform the other Party in writing of the claim and of the grounds on which its claim is based.
- 2 The Parties concerned shall establish an arbitral tribunal.
- 3 The arbitral tribunal shall consist of three members. Each Party shall nominate an arbitrator. Both Parties shall, by common accord, appoint the presiding arbitrator.
- 4 Failing such nomination or such appointment by common accord within four months from the date on which the arbitration was requested, the necessary nomination or appointment shall be entrusted to the Secretary General of the Permanent Court of Arbitration.
- 5 Unless the Parties agree otherwise, the tribunal shall determine its own procedure.
- 6 Unless otherwise agreed between the Parties, the tribunal shall decide on the basis of the applicable rules of international law or, in the absence of such rules, *ex aequo et bono*.
- 7 The tribunal shall reach its decision by a majority of votes. Its decision shall be final and binding.

## **Council of Europe Convention on Action against Trafficking in Human Beings**

Warsaw, 16.V.2005, CETS No. 197

### **Preamble**

The member States of the Council of Europe and the other Signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being;

Considering that trafficking in human beings may result in slavery for victims;

Considering that respect for victims' rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives;

Considering that all actions or initiatives against trafficking in human beings must be non-discriminatory, take gender equality into account as well as a child-rights approach;

Recalling the declarations by the Ministers for Foreign Affairs of the Member States at the 112th (14-15 May 2003) and the 114th (12-13 May 2004) Sessions of the Committee of Ministers calling for reinforced action by the Council of Europe on trafficking in human beings;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its protocols;

Bearing in mind the following recommendations of the Committee of Ministers to member states of the Council of Europe: Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence; Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation and Recommendation Rec (2001) 16 on the protection of children against sexual exploitation; Recommendation Rec (2002) 5 on the protection of women against violence;

Bearing in mind the following recommendations of the Parliamentary Assembly of the Council of Europe: Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member states; Recommendation 1450 (2000) on violence against women in Europe; Recommendation 1545 (2002) on a campaign against trafficking in women; Recommendation 1610 (2003) on migration connected with trafficking in women and prostitution; Recommendation 1611 (2003) on trafficking in organs in Europe; Recommendation 1663 (2004) Domestic slavery: servitude, au pairs and mail-order brides;

Bearing in mind the European Union Council Framework Decision of 19 July 2002 on combating trafficking in human beings, the European Union Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings and the European Union Council Directive of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities;

Taking due account of the United Nations Convention against Transnational Organized Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children with a view to improving the protection which they afford and developing the standards established by them;

Taking due account of the other international legal instruments relevant in the field of action against trafficking in human beings;

Taking into account the need to prepare a comprehensive international legal instrument focusing on the human rights of victims of trafficking and setting up a specific monitoring mechanism,

Have agreed as follows:

## **Chapter I – Purposes, scope, non-discrimination principle and definitions**

### **Article 1 – Purposes of the Convention**

- 1 The purposes of this Convention are:
  - a to prevent and combat trafficking in human beings, while guaranteeing gender equality;
  - b to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
  - c to promote international co-operation on action against trafficking in human beings.

- 2 In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.

#### **Article 2 – Scope**

This Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime.

#### **Article 3 – Non-discrimination principle**

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

#### **Article 4 – Definitions**

For the purposes of this Convention:

- a “Trafficking in human beings” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b The consent of a victim of “trafficking in human beings” to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in human beings” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d “Child” shall mean any person under eighteen years of age;
- e “Victim” shall mean any natural person who is subject to trafficking in human beings as defined in this article.

## **Chapter II – Prevention, co-operation and other measures**

#### **Article 5 – Prevention of trafficking in human beings**

- 1 Each Party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings.

- 2 Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.
- 3 Each Party shall promote a human rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes referred to in paragraph 2.
- 4 Each Party shall take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory.
- 5 Each Party shall take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them.
- 6 Measures established in accordance with this article shall involve, where appropriate, non-governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance.

#### **Article 6 – Measures to discourage the demand**

To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:

- a research on best practices, methods and strategies;
- b raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;
- c target information campaigns involving, as appropriate, *inter alia*, public authorities and policy makers;
- d preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.

#### **Article 7 – Border measures**

- 1 Without prejudice to international commitments in relation to the free movement of persons, Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in human beings.

- 2 Each Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with this Convention.
- 3 Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
- 4 Each Party shall take the necessary measures, in accordance with its internal law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
- 5 Each Party shall adopt such legislative or other measures as may be necessary to permit, in accordance with its internal law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Convention.
- 6 Parties shall strengthen co-operation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

#### **Article 8 – Security and control of documents**

Each Party shall adopt such measures as may be necessary:

- a To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- b To ensure the integrity and security of travel or identity documents issued by or on behalf of the Party and to prevent their unlawful creation and issuance.

#### **Article 9 – Legitimacy and validity of documents**

At the request of another Party, a Party shall, in accordance with its internal law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in human beings.

### **Chapter III – Measures to protect and promote the rights of victims, guaranteeing gender equality**

#### **Article 10 - Identification of the victims**

- 1 Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well

as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.

2. Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.
3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.
4. As soon as an unaccompanied child is identified as a victim, each Party shall:
  - a. provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;
  - b. take the necessary steps to establish his/her identity and nationality;
  - c. make every effort to locate his/her family when this is in the best interests of the child.

#### **Article 11 – Protection of private life**

1. Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).
2. Each Party shall adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.
3. Each Party shall consider adopting, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging the media to protect the private life and identity of victims through self-regulation or through regulatory or co-regulatory measures.



### **Article 12 – Assistance to victims**

- 1 Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:
  - a standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
  - b access to emergency medical treatment;
  - c translation and interpretation services, when appropriate;
  - d counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
  - e assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
  - f access to education for children.
- 2 Each Party shall take due account of the victim's safety and protection needs.
- 3 In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.
- 4 Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.
- 5 Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.
- 6 Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.
- 7 For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.

### **Article 13 – Recovery and reflection period**

- 1 Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the

person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.

- 2 During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.
- 3 The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.

#### **Article 14 – Residence permit**

- 1 Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:
  - a the competent authority considers that their stay is necessary owing to their personal situation;
  - b the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.
- 2 The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.
- 3 The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.
- 4 If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.
- 5 Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

#### **Article 15 – Compensation and legal redress**

- 1 Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.
- 2 Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.

- 3 Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.
- 4 Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.

#### **Article 16 – Repatriation and return of victims**

- 1 The Party of which a victim is a national or in which that person had the right of permanent residence at the time of entry into the territory of the receiving Party shall, with due regard for his or her rights, safety and dignity, facilitate and accept, his or her return without undue or unreasonable delay.
- 2 When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.
- 3 At the request of a receiving Party, a requested Party shall verify whether a person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving Party.
- 4 In order to facilitate the return of a victim who is without proper documentation, the Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter its territory.
- 5 Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non governmental organisations. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.
- 6 Each Party shall adopt such legislative or other measures as may be necessary to make available to victims, where appropriate in co-operation with any other Party concerned, contact information of structures that can assist them in the country where they are returned or repatriated,

such as law enforcement offices, non-governmental organisations, legal professions able to provide counselling and social welfare agencies.

- 7 Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.

#### **Article 17 – Gender equality**

Each Party shall, in applying measures referred to in this chapter, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.

### **Chapter IV – Substantive criminal law**

#### **Article 18 – Criminalisation of trafficking in human beings**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this Convention, when committed intentionally.

#### **Article 19 – Criminalisation of the use of services of a victim**

Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.

#### **Article 20 – Criminalisation of acts relating to travel or identity documents**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conducts, when committed intentionally and for the purpose of enabling the trafficking in human beings:

- a forging a travel or identity document;
- b procuring or providing such a document;
- c retaining, removing, concealing, damaging or destroying a travel or identity document of another person.

#### **Article 21 – Attempt and aiding or abetting**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 18 and 20 of the present Convention.
- 2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, an

attempt to commit the offences established in accordance with Articles 18 and 20, paragraph a, of this Convention.

#### **Article 22 – Corporate liability**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
  - a a power of representation of the legal person;
  - b an authority to take decisions on behalf of the legal person;
  - c an authority to exercise control within the legal person.
- 2 Apart from the cases already provided for in paragraph 1, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.
- 3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.
- 4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

#### **Article 23 – Sanctions and measures**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 18 to 21 are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include, for criminal offences established in accordance with Article 18 when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.
- 2 Each Party shall ensure that legal persons held liable in accordance with Article 22 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.
- 3 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with Articles 18 and 20, paragraph a, of this Convention, or property the value of which corresponds to such proceeds.
- 4 Each Party shall adopt such legislative or other measures as may be necessary to enable the temporary or permanent closure of any establishment which was used to carry out trafficking in human beings, without

prejudice to the rights of bona fide third parties or to deny the perpetrator, temporary or permanently, the exercise of the activity in the course of which this offence was committed.

#### **Article 24 – Aggravating circumstances**

Each Party shall ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for offences established in accordance with Article 18 of this Convention:

- a the offence deliberately or by gross negligence endangered the life of the victim;
- b the offence was committed against a child;
- c the offence was committed by a public official in the performance of her/his duties;
- d the offence was committed within the framework of a criminal organisation.

#### **Article 25 – Previous convictions**

Each Party shall adopt such legislative and other measures providing for the possibility to take into account final sentences passed by another Party in relation to offences established in accordance with this Convention when determining the penalty.

#### **Article 26 – Non-punishment provision**

Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.

### **Chapter V – Investigation, prosecution and procedural law**

#### **Article 27 – Ex parte and ex officio applications**

- 1 Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory.
- 2 Each Party shall ensure that victims of an offence in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence. The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority of the Party in the territory in which the offence was committed. The complaint shall be dealt with in accordance with the internal law of the Party in which the offence was committed.

- 3 Each Party shall ensure, by means of legislative or other measures, in accordance with the conditions provided for by its internal law, to any group, foundation, association or non-governmental organisations which aims at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence established in accordance with Article 18 of this Convention.

**Article 28 – Protection of victims, witnesses and collaborators with the judicial authorities**

- 1 Each Party shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for:
  - a Victims;
  - b As appropriate, those who report the criminal offences established in accordance with Article 18 of this Convention or otherwise co-operate with the investigating or prosecuting authorities;
  - c witnesses who give testimony concerning criminal offences established in accordance with Article 18 of this Convention;
  - d when necessary, members of the family of persons referred to in subparagraphs a and c.
- 2 Each Party shall adopt such legislative or other measures as may be necessary to ensure and to offer various kinds of protection. This may include physical protection, relocation, identity change and assistance in obtaining jobs.
- 3 A child victim shall be afforded special protection measures taking into account the best interests of the child.
- 4 Each Party shall adopt such legislative or other measures as may be necessary to provide, when necessary, appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for members of groups, foundations, associations or non-governmental organisations which carry out the activities set out in Article 27, paragraph 3.
- 5 Each Party shall consider entering into agreements or arrangements with other States for the implementation of this article.

**Article 29 – Specialised authorities and co-ordinating bodies**

- 1 Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against trafficking and the protection of victims. Such persons or entities shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions

effectively and free from any undue pressure. Such persons or the staffs of such entities shall have adequate training and financial resources for their tasks.

- 2 Each Party shall adopt such measures as may be necessary to ensure co-ordination of the policies and actions of their governments' departments and other public agencies against trafficking in human beings, where appropriate, through setting up co-ordinating bodies.
- 3 Each Party shall provide or strengthen training for relevant officials in the prevention of and fight against trafficking in human beings, including Human Rights training. The training may be agency-specific and shall, as appropriate, focus on: methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers.
- 4 Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.

#### **Article 30 – Court proceedings**

In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 6, each Party shall adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings:

- a the protection of victims' private life and, where appropriate, identity;
- b victims' safety and protection from intimidation,

in accordance with the conditions under its internal law and, in the case of child victims, by taking special care of children's needs and ensuring their right to special protection measures.

#### **Article 31 – Jurisdiction**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:
  - a in its territory; or
  - b on board a ship flying the flag of that Party; or
  - c on board an aircraft registered under the laws of that Party; or
  - d by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State;
  - e against one of its nationals.



- 2 Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 (d) and (e) of this article or any part thereof.
- 3 Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in this Convention, in cases where an alleged offender is present in its territory and it does not extradite him/her to another Party, solely on the basis of his/her nationality, after a request for extradition.
- 4 When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.
- 5 Without prejudice to the general norms of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with internal law.

## **Chapter VI – International co-operation and co-operation with civil society**

### **Article 32 – General principles and measures for international co-operation**

The Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through application of relevant applicable international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

- preventing and combating trafficking in human beings;
- protecting and providing assistance to victims;
- investigations or proceedings concerning criminal offences established in accordance with this Convention.

### **Article 33 - Measures relating to endangered or missing persons**

- 1 When a Party, on the basis of the information at its disposal has reasonable grounds to believe that the life, the freedom or the physical integrity of a person referred to in Article 28, paragraph 1, is in immediate danger on the territory of another Party, the Party that has the information shall, in such a case of emergency, transmit it without delay to the latter so as to take the appropriate protection measures.
- 2 The Parties to this Convention may consider reinforcing their co-operation in the search for missing people, in particular for missing children, if

the information available leads them to believe that she/he is a victim of trafficking in human beings. To this end, the Parties may conclude bilateral or multilateral treaties with each other.

#### **Article 34 – Information**

- 1 The requested Party shall promptly inform the requesting Party of the final result of the action taken under this chapter. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.
- 2 A Party may, within the limits of its internal law, without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.
- 3 Prior to providing such information, the providing Party may request that it be kept confidential or used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.
- 4 All information requested concerning Articles 13, 14 and 16, necessary to provide the rights conferred by these Articles, shall be transmitted at the request of the Party concerned without delay with due respect to Article 11 of the present Convention.

#### **Article 35 – Co-operation with civil society**

Each Party shall encourage state authorities and public officials, to cooperate with non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention.

### **Chapter VII – Monitoring mechanism**

#### **Article 36 – Group of experts on action against trafficking in human beings**

- 1 The Group of Experts on Action against Trafficking in Human Beings (hereinafter referred to as "GRETA"), shall monitor the implementation of this Convention by the Parties.
- 2 GRETA shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as a multidisciplinary expertise. They shall be elected by the

Committee of the Parties for a term of office of 4 years, renewable once, chosen from amongst nationals of the States Parties to this Convention.

- 3 The election of the members of GRETA shall be based on the following principles:
  - a they shall be chosen from among persons of high moral character, known for their recognised competence in the fields of Human Rights, assistance and protection of victims and of action against trafficking in human beings or having professional experience in the areas covered by this Convention;
  - b they shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions and shall be available to carry out their duties in an effective manner;
  - c no two members of GRETA may be nationals of the same State;
  - d they should represent the main legal systems.
- 4 The election procedure of the members of GRETA shall be determined by the Committee of Ministers, after consulting with and obtaining the unanimous consent of the Parties to the Convention, within a period of one year following the entry into force of this Convention. GRETA shall adopt its own rules of procedure.

#### **Article 37 – Committee of the Parties**

- 1 The Committee of the Parties shall be composed of the representatives on the Committee of Ministers of the Council of Europe of the member States Parties to the Convention and representatives of the Parties to the Convention, which are not members of the Council of Europe.
- 2 The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention in order to elect the members of GRETA. It shall subsequently meet whenever one-third of the Parties, the President of GRETA or the Secretary General so requests.
- 3 The Committee of the Parties shall adopt its own rules of procedure.

#### **Article 38 – Procedure**

- 1 The evaluation procedure shall concern the Parties to the Convention and be divided in rounds, the length of which is determined by GRETA. At the beginning of each round GRETA shall select the specific provisions on which the evaluation procedure shall be based.
- 2 GRETA shall define the most appropriate means to carry out this evaluation. GRETA may in particular adopt a questionnaire for each evaluation round, which may serve as a basis for the evaluation of the implementation by the Parties of the present Convention. Such a questionnaire shall

be addressed to all Parties. Parties shall respond to this questionnaire, as well as to any other request of information from GRETA.

- 3 GRETA may request information from civil society.
- 4 GRETA may subsidiarily organise, in co-operation with the national authorities and the "contact person" appointed by the latter, and, if necessary, with the assistance of independent national experts, country visits. During these visits, GRETA may be assisted by specialists in specific fields.
- 5 GRETA shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments are taken into account by GRETA when establishing its report.
- 6 On this basis, GRETA shall adopt its report and conclusions concerning the measures taken by the Party concerned to implement the provisions of the present Convention. This report and conclusions shall be sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned.
- 7 Without prejudice to the procedure of paragraphs 1 to 6 of this article, the Committee of the Parties may adopt, on the basis of the report and conclusions of GRETA, recommendations addressed to this Party (a) concerning the measures to be taken to implement the conclusions of GRETA, if necessary setting a date for submitting information on their implementation, and (b) aiming at promoting co-operation with that Party for the proper implementation of the present Convention.

## **Chapter VIII – Relationship with other international instruments**

### **Article 39 – Relationship with the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime**

This Convention shall not affect the rights and obligations derived from the provisions of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime, and is intended to enhance the protection afforded by it and develop the standards contained therein.

### **Article 40 – Relationship with other international instruments**

- 1 This Convention shall not affect the rights and obligations derived from other international instruments to which Parties to the present

Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention and which ensure greater protection and assistance for victims of trafficking.

- 2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
- 3 Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.
- 4 Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

## **Chapter IX – Amendments to the convention**

### **Article 41 – Amendments**

- 1 Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the member States of the Council of Europe, any signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 42 and to any State invited to accede to this Convention in accordance with the provisions of Article 43.
- 2 Any amendment proposed by a Party shall be communicated to GRETA, which shall submit to the Committee of Ministers its opinion on that proposed amendment.
- 3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by GRETA and, following consultation of the Parties to this Convention and after obtaining their unanimous consent, may adopt the amendment.
- 4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
- 5 Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration

of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

## **Chapter X – Final clauses**

### **Article 42 – Signature and entry into force**

- 1 This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and the European Community.
- 2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 Signatories, including at least 8 member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.
- 4 In respect of any State mentioned in paragraph 1 or the European Community, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

### **Article 43 – Accession to the Convention**

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20 d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.
- 2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

### **Article 44 – Territorial application**

- 1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

- 2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 45 – Reservations**

No reservation may be made in respect of any provision of this Convention, with the exception of the reservation of Article 31, paragraph 2.

#### **Article 46 – Denunciation**

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

#### **Article 47 – Notification**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any State signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 42 and to any State invited to accede to this Convention in accordance with the provisions of Article 43 of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 42 and 43;
- d any amendment adopted in accordance with Article 41 and the date on which such an amendment enters into force;
- e any denunciation made in pursuance of the provisions of Article 46;

- f any other act, notification or communication relating to this Convention
- g any reservation made under Article 45.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Warsaw, this 16th day of May 2005, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community and to any State invited to accede to this Convention.

The fight against today's new forms of criminality, across Europe and beyond, can only succeed if we have the necessary tools, in particular in the form of highly effective international co-operation in criminal matters.

For over 50 years, the Council of Europe has contributed to building a legal area based on the respect of Human Rights, the development of democracy and the promotion of the rule of law. It has developed an important set of legal instruments to assist States in dealing with crime.

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