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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

DOCUMENT ON THE MODEL PROVISIONS PROJECT

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This document provides "model provisions" for Council of Europe criminal law conventions. The full text is intended to set out a "model convention" and follows in principle the structure of some recent CoE criminal law conventions. Future negotiators of draft criminal law conventions should use this model text as guidance in their work.

Where possible and appropriate, the text contains "standard language" that should be used in future negotiations on any new criminal law convention. Many of these standard provisions can be used by negotiators without adjustments (especially the general provisions in articles 19 to 30). The model convention also contains articles or paragraphs that are placed in square brackets (e.g. article 2, article 4 paragraphs 2 and 3). This indicates that the insertion of that article or paragraph is optional, however, when negotiators choose to do so, they are advised to use the standard language set out in that article/paragraph. In other cases, the model provisions contain certain phrases/words that are place in square brackets (e.g. article 1 paragraph 1, article 5 paragraph 1). Here, the negotiators will need to decide on the wording to be used.

The following document also contains explanatory notes (texts contained in the "boxes"), which are intended to offer guidance to the negotiators. These provide some background information and explanation on the proposed model provisions as well as give guidance on necessary adjustments, amendments and decisions on optional clauses of the model provisions.

Council of Europe

Convention

On……

Preamble

The member States of the Council of Europe and the other signatories to this Convention,

….

….

1 *The Preamble contains typical clauses ("Bearing in mind", "Considering", "Recognising", "Determined" etc.) and should refer to the purpose of the convention, main principles of its implementation (such as reference to the 1950 CoE Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 5), the principles of Rule of Law and proportionality) as well as to relevant other CoE conventions, recommendations, decisions and relevant other international legal instruments.*

Have agreed as follows:

Chapter I – Purpose, principle of non-discrimination, scope, use of terms

Article 1 – Purpose of the Convention

1 The purpose of this Convention is:

a) to prevent and combat…..;
b) [to protect the rights of victims of the offences established under this Convention];
c) to [facilitate/promote] international cooperation [against ….]

[2 In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a [specific] follow-up mechanism.]

2 *Article 1 paragraph 1 serves to briefly describe the <u>purpose of the specific convention</u>. Typically, modern CoE criminal law conventions contain the three elements listed here under lit. a., b. and c. The purpose listed as point b. refers to Articles 14 and 15 of this model text, which provide suggested language for possible provisions on the protection of*

victims. Negotiators may choose to use these if the specific type(s) of crime to be covered by the draft convention would require special provisions on the protection of victims.

3 *As this model text is primarily intended to be applied for drafting of CoE criminal law conventions, it foresees that the draft convention, in line with the respective Committee of Minister's mandate, will need to include one or more provisions on substantive criminal law (Article 4 of this model text), requiring Parties to ensure that a certain type of conduct described therein is criminalized under domestic law. In determining the specific type (scope) and definition of conduct that the Parties to the convention will be required to criminalize, negotiators should consider that criminalization of such conduct should always be seen as a "last resort" and the convention should thus focus on serious cases of conduct that actually require a criminal law response. Criminal law provisions should not be drafted merely with the intent of prescribing another – presumably particularly effective – means of pursuing political/regulatory aims. Criminal law provisions should only be introduced when they are considered essential in order to sufficiently protect the rights and interests, which the convention intends to address. Negotiators should consider the expected value or effectiveness of criminal law provisions compared to other possible measures, taking into account also the possibilities to effectively investigate and prosecute such crimes. In drafting criminal law provisions, negotiators should take into account how serious and frequent the harmful conduct is and whether it is a serious threat in all or at least many of the CoE member States.*

4 *It will be equally important for the negotiators to also address means of prevention of such crimes. Several CoE criminal law conventions contain extensive provisions on prevention (c.f. e.g. CETS No. 210, 201 and 197); others foresee more general, nevertheless important requirements in this respect (c.f. e.g. CETS No. 211). Chapter V of this model text thus also foresees the drafting of provisions on prevention, both, on domestic and on international level. Due to the very different nature of possible prevention measures that may be appropriate considering the purpose and scope of the convention, this model text does not provide any specific suggested wording.*

5 *Paragraph 2 is a text that has been used in recent CoE criminal law conventions and refers to the provisions of the convention, setting up a follow-up-mechanism (c.f. Article 19 to 21 of this model text and the notes thereto). This is considered as an additional purpose of the convention which will be pursued collectively on the level of the State Parties in order to ensure that the convention actually does receive proper attention, implementation and application. However, depending on the specific case, negotiators may propose to refrain from setting up any follow-up-mechanism in Articles 19 to 21, in which case there would also be no paragraph 2 of Article 1. The term "specific" would be used in case Articles 19 to 21 establish a "specific" mechanism" rather than referring to an existing body (such as the CDPC) for carrying out such a function.*

[Article 2 – Principle of non-discrimination

The implementation of the provisions of this Convention by the Parties shall be secured without discrimination on any ground such as sex, race, colour, language, age, religion, political or any other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, state of health, disability or other status.]

6 *This article is standard language in modern CoE criminal law conventions and prohibits discrimination in Parties' implementation of the convention and in particular in enjoyment of measures to protect and promote victims' rights. The meaning of discrimination in Article 2 is identical to that given to it under Article 14 of the European Convention on Human Rights (ECHR).*

7 *The list of non-discrimination grounds in Article 2 is based on that in Article 14 ECHR and the list contained in Article 1 of Protocol No. 12 to the ECHR. However, as in other recent CoE criminal conventions, additional non-discrimination grounds of age, sexual orientation, state of health and disability have been included.*

8 *Depending on the subject matter of the convention to be drafted, negotiators may consider whether such a provision on discrimination would not be necessary e.g. where it does not contain specific provisions on the protection of victims (c.f. Articles 14 and 15 of this model text).*

[Article 3 – Scope and use of terms

1 This Convention applies to …. / does not apply to …..,

2 For the purposes of this Convention:

a) the term " …. " shall mean …
b) the term " …. " shall mean …]

Paragraph 1 (scope)

9 *Some, but not all CoE criminal law conventions have a specific provision on the scope of the convention. Such a clause is neither intended to duplicate the provision on the purpose of the convention (Article 1) nor intended to summarize the specific content (such as e.g. the different provisions on substantive criminal law). Where appropriate, a convention may include a provision on the scope of the convention, which could serve to clarify or limit the application of the convention on a horizontal level (c.f. e.g. Article 2 of CETS No. 197 and Article 3 of CETS No. 211 or Article 2 (1) of the THO Convention).*

Paragraph 2 (definitions)

10 *Typically (but not necessarily), CoE criminal law conventions also include definitions for a certain number of terms used in the convention. This should only be done if a certain term needs to be given a binding interpretation and – as a general rule – only if the term is used on several occasions in the convention. Constituting elements of the description of an offence should preferably be defined in the relevant article in the section on substantive criminal law unless it is a term used in several of these articles.*

Chapter II – Substantive criminal law

Article 4 – …. (brief description of criminal offence)

1 Each Party shall ensure that the following conduct constitutes a criminal offence when committed intentionally: …...

Possible alternative text of paragraph 1

Paragraph 1, option A

Each Party shall ensure that the following conduct constitutes a criminal offence when committed intentionally or that this conduct is subject to non-criminal sanctions in accordance with domestic law: ….. [If the domestic law of a Party foresees criminal sanctions in accordance with this provision, it shall endeavour to apply also Articles 5 to 16 to such offences].

Paragraph 1, option B

Each Party shall consider taking the necessary measures to ensure that the following conduct constitutes a criminal offence when committed intentionally: …... [If the domestic law of a Party foresees criminal sanctions in accordance with this provision, it shall endeavour to apply also Articles 5 to 16 to such offences.]

Optional reservation clauses to be inserted as paragraph 2

Paragraph 2, option A

[Any State or the European Union 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 under specific conditions, paragraph 1[as regards/to …...].]

Paragraph 2, option B

[Any State or the European Union 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 to provide for non-criminal sanctions, instead of criminal sanctions for the conduct described in paragraph 1.]

11 *When drafting provisions on substantive criminal law, negotiators should always consider the appropriateness of requiring Parties to criminalize the specific conduct (c.f. notes on Article 1 of this model text). The criminal law provisions should focus on serious cases of conduct causing actual harm or seriously threatening the rights or essential interest which the draft convention intends to protect. The draft convention should avoid criminalisation of a conduct at an unwarrantably early stage. Conduct which only implies an abstract danger to the protected right or interest should be criminalised only if appropriate considering the particular importance of the right or interest to be protected. The wording to be used in the draft convention should be sufficiently clear in order to be effectively implemented in the domestic legislation of the Parties. On the other hand, the terminology and specific content should offer sufficient flexibility to be implemented by Parties with different legal traditions and concepts of criminalisation.*

12 *This model text for an Article 4 should serve as a model for setting out one or more provisions on substantive criminal law, each of them defining specific conduct in respect of which Parties to the convention shall ensure that it constitutes a criminal offence in accordance with their domestic law. The text of paragraph 1 is standard language that should be used in each of such provisions. Under the conditions described below, when delegations cannot all agree on a strict requirement to criminalize all of the types of conduct, which should fall under the convention, negotiators may consider adding a second paragraph providing for a reservation possibility, using the text of either of the two options for such a paragraph 2 set out below. As a further alternative, negotiators may, where appropriate, use a different wording for paragraph 1. There are two different options for such an alternative wording set out below. Whereas paragraph 1 Option B cannot be combined with an additional reservation possibility, paragraph 1 Option A could, where required, be combined with a reservation possibility as set out in paragraph 2, option A.*

Paragraph 1

13 *This is the standard language to be used for provisions obliging States to ensure that the conduct to be described therein constitutes a criminal offence under their domestic law. It is up to States to decide how this obligation is fulfilled, e.g. by establishing a specific criminalisation for the offence concerned, or by ensuring that the conduct is punishable as a criminal offence by other criminal law provisions. Such provisions of a criminal law convention are always intended to set minimum standards; the domestic legislation thus has to ensure criminalization of the conduct as described, but it may go further e.g. by using a broader definition of the crime. Normally, CoE criminal law conventions require States to ensure that the conduct described therein constitutes a "criminal offence", implying that these will be applied in the course of criminal (court) procedures imposing criminal sanctions (c.f. Article 8 below). Depending on the subject matter to be covered by the draft convention, it may contain several such articles on substantive criminal law, in each case describing a certain conduct to be criminalised.*

14 *CoE conventions typically require criminalisation only in case of intentional conduct. The interpretation of the term "intentionally" is left to the domestic law of the Parties. When drafting the description of the offence in paragraph 1, negotiators will need to decide whether the offence should cover only certain acts or omissions by the offender or also a particular effect this conduct has e.g. on the health or the financial interests of a victim. Since the provision sets only a minimum standard, Parties to the convention will be free to also criminalise non-intentional acts (negligence). In case the negotiators see a need to require criminalisation of certain conduct when committed with negligence, they may choose to add a specific provision to that effect "… when committed with negligence" (c.f. e.g. CETS No. 172). This should be done only when this is considered appropriate due to the particular relevance of the right or essential interests to be*

protected by the convention.

Possible alternative texts

Paragraph 1, option A

15 *While CoE criminal law conventions will always require the criminalisation of certain conduct and thus contain one or more provisions as in paragraph 1 above, it may be appropriate in cases of some other, less serious offences to offer greater flexibility in this respect and allow Parties to implement their obligations under the convention by foreseeing non-criminal sanctions such as "administrative sanctions" to be applied in the course of administrative or other non-criminal proceedings. Examples of different ways to allow for such flexibility may be found in the Medicrime Convention (CETS No. 211), in Article 40 of the Convention on preventing and combating violence against women and domestic violence (CETS No. 210) and in the Convention on Protection of Environment through Criminal Law (CETS No. 172).*

16 *The wording foreseen in Option A above uses the approach found in Article 40 of CETS No. 210 and is intended to clarify that the provision allows for flexibility to choose the appropriate measure, depending also on the different legal concepts applicable in different CoE member States. Parties thus may decide to either apply criminal sanctions or non-criminal sanctions in case of the conduct to be described in paragraph 1. If negotiators choose to allow in specific articles for other than criminal sanctions, it would be necessary to take this into account when negotiating further provisions such as those in Articles 5 to 16 of this model text. Normally, those articles should (strictly) be applicable only to "criminal offences". Thus reference in articles 5 to 16 to the articles of Chapter II should either exclude an article, which uses the wording of paragraph 1 Option A. In this case, the second sentence of paragraph 1 Option A, as proposed above, should be inserted, expecting Parties to "endeavour" applying Articles 5 to 16 if they choose to foresee criminal sanctions in case of the conduct to be described in paragraph 1 Option A. Alternatively, the wording of Articles 5 to 16 could include reference to an article modelled on the text of paragraph 1 Option A but should clarify that they only apply if a Party has opted to foresee criminal sanctions. Thus Articles 5 to 16 should always refer to "criminal offences" with the understanding that the obligation set out therein does not apply if a Party has opted for non-criminal sanctions.*

Paragraph 1, option B

17 *Exceptionally, when negotiators cannot agree on a strict obligation to criminalise certain conduct (or at least to impose non-criminal sanctions as foreseen in Option A), they may choose to use "softer" language ("shall consider taking…" rather than "shall take…" as in the regular version of Article 4 (1)). This may be the case because the description of the offence given in that article of the convention is considered by some States as being too broad in order to be acceptable as a strict obligation to criminalise. Examples are Articles 4 (4) and 6 of the THO-Convention and Article 19 of the THB-Convention (CETS No 197). When using the text of paragraph 1 Option B, the same considerations as in case of Option A apply in respect of Articles 5 to 16 (c.f. above). Where negotiators agree to refer in those articles also to a provision modelled on the text of paragraph 1 Option B, a Party that chooses to criminalise the conduct described, it would also be obliged to apply Articles 5 to 16).*

18 *To be noted: in view of the rather "weak requirement" of the provision of paragraph 1 Option B, such a solution would not be suitable for core provisions of a convention on criminal law. This solution may only be taken for additional provisions which supplement other articles that impose clear obligations to criminalise. If most, but not all negotiators can agree on a strict obligation on criminalisation of a certain conduct, they should first consider combining the strict criminalisation approach of Article 4 paragraph 1 with a possibility for a reservation by those states which choose to do so (c.f. paragraph 2 above).*

19 *Paragraph 2, option A is the standard text for an optional provision allowing Parties to limit the scope of application of paragraph 1. It should only be used where necessary in order to achieve consensus on the text. Preferably, negotiators should agree on the scope and, if necessary, further qualify the description of the offence in paragraph 1. However, if Parties cannot agree on the scope of application or other elements of the description of the conduct as set out in paragraph 1, negotiators can include a reservation clause as set out in this paragraph. The text following the words "as regards" would be intended to limit the reservation possibility to those aspects where such a possibility is required by certain States (c.f. e.g. Article 5 paragraph 3 of CETS No. 211 or Article 20 paragraph 3 and 21 paragraph 2 of CETS No. 201) rather than allowing for an unlimited reservation.*

20 *In other situations, and as an alternative to using the text of paragraph 1 Option A, Paragraph 2, option B is a possible text for a different type of reservation, which may be used in case negotiators cannot all agree on the obligation to impose criminal sanctions in respect of the conduct described in paragraph and thus want to allow Parties to apply other than criminal sanctions, however, only once they have made a specific declaration to this effect (c.f. for an example Article 78 paragraph 3 of the Convention on preventing and combating violence against women and domestic violence (CETS No. 210)).*

Article 5 – Aiding or abetting and attempt

1 Each Party shall ensure that the intentional aiding or abetting the commission of a criminal offence referred to in [Articles x and y of] this Convention also constitutes a criminal offence.

2 [Each Party shall ensure that the intentional attempt to commit any of the criminal offences referred to in [Articles x and y of] this Convention also constitutes a criminal offence.]

3 [Any State or the European Union 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 under specific conditions, paragraph 2 to criminal offences referred to in [Article x and y of] this Convention.]

21 *This article contains standard wording, requiring the criminalisation of acts of "aiding or abetting" (paragraph 1) and "attempt" (paragraph 2) of some or all of the criminal offences described in the convention. The interpretation of these terms is left to the domestic law of the Parties. The negotiators will need to determine if and for which criminal law offences the criminalisation of attempt (paragraph 2) should be foreseen.*

22 *Paragraph 1 is worded slightly different than in previous CoE criminal law conventions in order to clarify that criminalisation of aiding and abetting is required only in cases where an offence in accordance with the Convention has been committed. The liability for aiding or abetting thus arises only where a person is intentionally contributing to the commission of a crime (as described in the convention) by another person (c.f. already the clarification in the Explanatory Reports to CETS No. 211, 201 and 197 and to the THO-Convention). As CoE criminal law conventions set only minimum rules, this would not exclude the possibility for Parties to extend the criminal liability of persons aiding or abetting a crime beyond what is required by the text in paragraph 1.*

23 *As to criminalisation of an attempt to commit certain of the crimes described in the convention (paragraph 2), negotiators should consider the appropriateness of such a requirement. They should determine whether it is necessary and appropriate in view of the description of each the offences to also criminalise an attempt to commit such an offence.*

24 *In respect of both, paragraphs 1 and 2, negotiators will have to agree whether the rule shall apply to all "criminal offences referred to in this Convention" or only to certain articles, which could, e.g. in the case of paragraph 1, exclude reference to an article of the convention which allows application of on non-criminal sanctions (c.f. notes on alternative paragraph 1 Option A and – as an example – Article 21 of CETS No. 197; on the other hand: Article 41 of CETS No. 210).*

25 *Paragraph 3 may be used to allow for declaring a reservation in the application of paragraph 2 (no reservations should be allowed in respect of paragraph 1). It would, however, always be preferable for negotiators to agree on any required exclusions of certain types of offences from the application of paragraph 2 (thus not requiring states to also criminalise the attempt to commit a certain offence). Only if no agreement can be found, negotiators may apply a broader scope in paragraph 2 and allow specific reservations in respect of certain types of offences.*

Article 6 – Jurisdiction

1 Each Party shall take the necessary measures to establish jurisdiction over criminal offence referred to in [Articles x, y 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].

[2 Each Party shall consider taking the necessary measures to establish jurisdiction over any criminal offence referred to in [Articles x, y of] this Convention, where the offence is committed against one of its nationals.]

3 [Each Party shall take the necessary measures to establish jurisdiction over any criminal offence referred to in [Articles x, y of] this Convention, when the alleged offender is present in its territory and cannot be extradited to another State, solely on the basis of his or her nationality.]

3*bis* [For the prosecution of criminal offences referred to in Article x of this Convention, each Party shall take the necessary measures to ensure that its jurisdiction as regards paragraph 1.d is not subordinated to the condition that the acts are criminalized at the place where they were performed.]

3*ter* [For the prosecution of the criminal offences referred to in [Articles x, y of] this Convention, each Party shall take the necessary measures to ensure that its jurisdiction as regards paragraph 1. d of this article is not subordinated to the condition that the prosecution can only be initiated following a report from the victim or the laying of information by the State of the place where the offence was committed.]

4 [Any State or the European Union 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 paragraph 1, sub-paragraph d of this article.]

5 Where more than one Party claims jurisdiction over an alleged offence in accordance with [Articles x, y of] this Convention, the Parties concerned shall, where appropriate, consult each other with a view to determining the most appropriate jurisdiction for prosecution.

6 Without prejudice to the general rules of international law, this Convention shall not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law.

26 *Typically, CoE criminal law conventions include an article on „Jurisdiction", which specifies a minimum list of criteria for determining the scope of the jurisdiction which the Parties shall foresee in their domestic law. These rules are considered to be "minimum rules". Thus they only contain an obligation to "at least" criminalize offences and/or foresee a competence for their courts when the offence is committed under the circumstances described in that article on jurisdiction (c.f. paragraph 6). The obligation in this respect is only to make the necessary provisions in their domestic law which allow exercising of jurisdiction in such cases. The provision is not intended to require law enforcement authorities and/or courts to actually exercise (make use of that) statutory jurisdiction in a specific case. The standard "minimum" criteria for establishing jurisdiction are those following from the "territoriality principle", i.e. those specified in paragraph 1 lit. a., b. and c. of this model text. However, Parties are never prevented by the convention to extend their jurisdiction also to offences committed abroad.*

27 *While it would – in principle – not be necessary to add further criteria on establishing jurisdiction, CoE criminal law conventions typically also include an obligation to foresee jurisdiction in case of an offence committed outside the territory of a Party by one of its nationals (paragraph 1 d). Future negotiators may choose to refrain from including such an obligation. Alternatively, when negotiators largely do agree on including the active nationality principle, they may choose to allow Parties to enter a reservation in respect of this obligation (paragraph 4).*

28 *Some CoE conventions also include an obligation to establish jurisdiction in case of an offence committed outside of the territory of the Party against one of their nationals (passive nationality principle; c.f. e.g. Article 31 par 1 lit e. of the Warsaw Convention (CETS No. 197) and Article 10 par. 2 of the Medicrime Convention (CETS No. 211). These Conventions then also include a reservation possibility in respect of this obligation. However, most more recent conventions use the model text proposed here in paragraph 2 (c.f. Article 44 par 2 of the Istanbul Convention (CETS No. 210, Article 25 par 2 of the Lanzarote Convention (CETS No. 201) and Article 10 par 2 of the THO Convention), which imposes no obligation on Parties to establish jurisdiction in such cases but merely to "consider" introducing such a rule in their law (to be noted: these conventions have used the term "endeavour" instead; however, in this case the term "consider" would be more appropriate as the decision is really a policy choice by the Parties and not a question of possible attempts to reach such a goal).*

29 *In some cases, CoE conventions also extend the active and/or passive "nationality principle" to persons, who are not nationals but "habitual residents" of the respective state, whereby it is left to the Parties to determine which persons they consider to be habitual residents. The possibilities to enter a reservation in respect of the active and/or passive nationality principle in these cases also apply to the "habitual residents". Since, however, the list of jurisdiction criteria is a minimum list and thus Parties are not prevented by the Convention to exercise jurisdiction also in case of offences committed outside of their territory even if the offence was committed by or against persons other than own nationals (paragraph 6), negotiators should refrain from including this criterion in future conventions.*

30 *Typically, CoE criminal law conventions also include an obligation to establish jurisdiction in case of extra-territorial offences, where the alleged offender is present on the territory of that state but cannot be extradited to another Party because of his or her nationality ("aut dedere, aut judicare" – c.f. paragraph 3 of this model text). The text set out in paragraph 3 is optional; however, when negotiators want to include such an obligation, they should use the model text. If the convention does include an obligation to establish jurisdiction in case of own nationals (paragraph 1 d. of the model text), a Party that does not extradite the alleged offender because of his/her nationality will have jurisdiction in this case already on the basis of paragraph 1d. Thus the additional obligation to establish jurisdiction on the basis of the rule in paragraph 3 of this model text could only become relevant if the convention also allows declaring a reservation in respect of paragraph 1 d.*

31 *In case of a particular convention it may be appropriate to insert a provision as worded in paragraph 3bis of this model text. Normally CoE criminal law conventions are drafted on the assumption that any obligation of a Party to establish jurisdiction in case of extra-territorial offences does not prevent that state to subordinate its jurisdiction to the condition that the acts are criminalized (also) at the place where they were performed. Here again, any Party may go further in its domestic law and wave such a condition in case of specific crime types in order to be able to investigate and prosecute an offence committed – e.g. by an own national – abroad, even if the conduct is not considered to be*

a crime in the state where it was performed. In exceptional circumstances, in case of particularly serious crimes, negotiators may consider to include an obligation not to subordinate their jurisdiction to such a dual-criminality requirement (exceptionally this has been done in CETS No. 201 (Article 25 paragraph 4) and CETS No. 210 (Article 25 paragraph 4) and CETS No. 210 (Article 44 paragraph 3). If such a rule is required by many delegations but not acceptable to all, negotiators should foresee a reservation possibility such as that in paragraph 4 of this model text which would also allow Parties not to apply the rule in paragraph 3bis. Alternatively negotiators may consider a specific (more limited) reservation possibility on paragraph 3bis (c.f. e.g. Article 25 paragraph 5 of the Lanzarote Convention and Article 78 paragraph 2 of the Istanbul Convention).

32 *Several CoE criminal conventions contain a further obligation as worded in paragraph 3ter. Negotiators may opt to include such a provision where it is considered to be necessary to require Parties to establish jurisdiction in respect of paragraph 1 d. even though in a particular case the authorities have not received a (formal) a report from the victim or the laying of information by the state of the place where the offence was committed.*

33 *Most of the recent CoE criminal law conventions foresee a reservation possibility such as that in paragraph 4 of this model text. Such a clause is necessary only if paragraph 1 also includes the obligation to establish jurisdiction in respect of extra-territorial offences of own nationals (par 1.d). It allows a Party not to apply or to apply only in specific cases or conditions the obligation to establish jurisdiction in case of offences committed by their own nationals abroad. This reservation possibility would also allow to wave or limit the application of either of the rules in paragraph 3bis or 3ter, should the convention include such provisions.*

34 *Especially if a CoE convention does require Parties to establish jurisdiction also in case of offences committed abroad (such as in paragraph 1 d. of this model text), it is possible that two or more Parties have jurisdiction over a case. In order to avoid duplication of procedures and unnecessary burden for the alleged offender or inconvenience for witnesses, the affected Parties should be required to consult in order to determine the proper venue for prosecution – as foreseen in paragraph 5 of this model text. In some cases it will be most effective for them to choose a single venue for prosecution; in others it may be best for one country to prosecute some alleged perpetrators, while one or more other countries prosecute others. Either method is permitted under paragraph 5. Finally, the obligation to consult is not absolute; consultation is to take place "where appropriate". Thus, for example, if one of the Parties knows that consultation is not necessary (e.g. it has received confirmation that the other Party is not planning to take action), or if a Party is of the view that consultation may impair its investigation or proceeding, it may delay or decline consultation.*

35 *As explained above, paragraph 6 is intended to clarify that the rules in this Article set only minimum requirements and Parties are not prevented by the convention to exercise jurisdiction also in other situations as determined in their domestic law.*

[Article 7 – Liability of legal persons

1 Each Party shall ensure that legal persons can be held liable for criminal offences referred to in [Articles x, y of] this Convention, when 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 that 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 provided for in paragraph 1, each Party shall 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 referred to in 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 a natural person who has committed the offence.]

36 *This text follows the standard language of CoE criminal law conventions and is intended to address the different concepts of liability of legal persons for criminal offences, which are applied in different CoE member states. Normally, CoE criminal law conventions should include this article. The intention of this provision is, to make commercial companies, associations and similar legal entities ("legal persons") liable for criminal actions performed – for their benefit – by a natural person. It does not require foreseeing criminal sanctions against the legal entity itself but allows foreseeing civil or administrative liability instead. However, depending on the subject matter (types of crimes), negotiators may choose not to include this article (e.g. the Istanbul Convention CETS No. 210 does not contain such a provision).*

Article 8 – Sanctions and measures

1 Each Party shall ensure that the criminal offences referred to in [Articles x, y of] this Convention, when committed by natural persons, are punishable by effective, proportionate and dissuasive sanctions/penalties, which take into account the seriousness of the offence. [These sanctions/penalties shall include, for criminal offences in accordance with Articles [x] and [y], penalties involving deprivation of liberty that may give rise to extradition.]

2 [Each Party shall ensure that legal persons held liable in accordance with Article 7 are subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal monetary sanctions [, and could/may include other measures, such as:

a) [temporary or permanent disqualification from exercising commercial activity;
b) exclusion from entitlement to public benefits or aid;
c) placing under judicial supervision;
d) a judicial winding-up order].]

3 [Each Party shall take the necessary legislative and other measures, in accordance with domestic law, to permit seizure and confiscation of:

i. instrumentalities used to commit criminal offences in accordance with this Convention;
ii. Proceeds derived from such offences, or property whose value corresponds to such proceeds.]

37 *The text in Article 8 largely follows examples of recent CoE conventions and should be inserted into any new convention, possible with certain variations depending on the specificities of the crimes in question as well as the obligations to criminalize such conduct.*

38 *<u>Paragraph 1, first sentence</u> sets out the <u>principle rule</u>, requiring Parties to foresee in their*

legislation "effective, proportionate and dissuasive sanctions/penalties". This rule applies only to natural persons. The term "sanction"/"penalty" means that Parties may foresee penalties involving deprivation of liberty and/or monetary sanctions. The second sentence follows typical examples of CoE conventions. While the principle of proportionality should be taken into account in determining the appropriate sanctioning level for certain offence, CoE conventions typically require Parties to foresee in the case of some or all of the offences described, when committed by natural persons, penalties involving deprivation of liberty that may give rise to extradition. The reason is that under Article 2 of the European Convention on Extradition (CETS No. 24), extradition is to be granted in respect of offences punishable under the laws of the requesting and requested Parties by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. The provision here is thus intended to ensure that alleged offenders are extraditable – at least in relation between Parties that are also parties to CETS No. 24.

39 *Paragraph 2 is a standard text on the liability of legal persons. Some, but not all CoE criminal law conventions contain a list of "other measures" that Parties may want to foresee in their legislation. Obviously, the text contains only a list of examples and Parties may refrain from taking any of these measures or take other measures that are not included in the list. If – due to the specific subject matter (crime types in question) – negotiators opt not to include a provision on corporate liability, there would also be no need to include any of the rules in paragraph 2 of this model text.*

40 *Paragraph 3 is a possible model text for additional measures which Parties are obliged to foresee in their legislation. It may not be appropriate to include any such paragraph in a particular convention. Where negotiators opt to do so, the text may have to be adapted to the specific requirements of the fight against the types of crime that are subject to the convention.*

[Article 9 – Aggravating circumstances

Each Party shall ensure that the following circumstances, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of domestic law, be taken into consideration as aggravating circumstances in determining the sanctions in relation to the criminal offences in accordance with this Convention:

a) ….. [….]
b) [the offence was committed in the framework of a criminal organization;]
c) the perpetrator has previously been convicted of offences established in accordance with this Convention.]

41 *Most recent CoE criminal law conventions contain an Article on „Aggravating circumstances". Whether that is appropriate, will have to be determined taking into account the subject matter of the convention and the description of the offences. In particular, such an obligation cannot apply to cases where the aggravating circumstances already form part of the constituent elements of the offence as described in the convention and implemented by the Parties.*

42 *The phrase "may be taken into consideration" highlights that the convention places an obligation on Parties to ensure that these aggravating circumstances are available for judges to consider when sentencing offenders, although there is no obligation on judges to apply them. The reference to "in conformity with the relevant provisions of domestic law" is intended to reflect the fact that the various legal systems in Europe have different approaches to address those aggravating circumstances and permits Parties to retain their fundamental legal concepts.*

43 *A list of specific aggravating circumstances will have to be determined considering the types of offences that are subject to the particular convention and only the case of a previous conviction (c.f. lit d. above) could be considered to be universally applicable.*

Article 10 – Previous sentences passed by another Party

Each Party shall take the necessary measures to provide for the possibility to take into account final sentences passed by another Party in relation to the offences referred to in this Convention when determining the sanctions.

44 *Standard language that should be used in all CoE criminal law conventions. Traditionally, previous convictions by foreign courts were not necessarily taken into account on the grounds that criminal law is a national matter and that there can be differences of national law. As the CoE criminal law conventions serve to set a certain (minimum) standard in terms of criminalization, this provision is intended to ensure that not only own, but also foreign previous sentences will be taken into account .To comply with the provision Parties may provide in their domestic law that previous convictions by foreign courts are to result in a harsher penalty. They may also provide that, under their general powers to assess the individual's circumstances in setting the sentence, courts should take those convictions into account. This possibility should also include the principle that the offender should not be treated less favorably than he would have been treated if the previous conviction had been a national conviction. This provision does not place any positive obligation on courts or prosecution services to take steps to find out whether persons being prosecuted have received final sentences from another Party's courts.*

Chapter III – Investigation, prosecution and procedural law

[Article 11 – Initiation and continuation of proceedings

Each Party shall take the necessary legislative and other measures to ensure that investigations or prosecution of criminal offences referred to in this Convention should not be subordinate to a complaint and that the proceedings may continue even if the complaint is withdrawn.]

45 *Model text based on some recent CoE criminal law conventions, which negotiators may in appropriate cases consider to include in a draft convention Depending on the specific subject matter of the convention it may be appropriate to use additional or alternative language.*

[Article 12 – Criminal investigations

Each Party shall take the necessary legislative and other measures, in conformity with the principles of its domestic law, to ensure effective criminal investigation and prosecution of offences established in accordance with this Convention.]

46 *Possible provision on criminal investigations. The text used here is based on the example of one of the recent CoE criminal conventions, the THO Convention. Depending on the specific subject matter of the convention it may be appropriate to use additional or alternative language (c.f. for examples: Article 16 of CETS No. 211, Articles 49 to 54 of CETS No. 21).*

Article 13 – International co-operation in criminal matters

1 The Parties shall co-operate with each other, in accordance with the provisions of this Convention and in pursuance of relevant applicable international and regional instruments and arrangements agreed on the basis of uniform or reciprocal legislation and their domestic law, to the widest extent possible, for the purpose of investigations or proceedings concerning the criminal offences established in accordance with this Convention, including seizure and confiscation.

2 If a Party that makes extradition or mutual legal assistance in criminal matters conditional on the existence of a treaty receives a request for extradition or legal assistance in criminal matters from a Party with which it has no such a treaty, it may, acting in full compliance with its obligations under international law and subject to the conditions provided for by the domestic law of the requested Party, consider this Convention as the legal basis for extradition or mutual legal assistance in criminal matters in respect of the offences established in accordance with this Convention.

47 *CoE criminal law conventions typically include an article on international cooperation. Except in the specific case of the Budapest Convention (CETS No. 185), these conventions don't contain any specific rules on mutual legal assistance or extradition but refer – instead – to any relevant other convention or treaty applicable between the parties concerned (paragraph 1 of this model text). In particular, Parties may consider, where possible, applying Articles 16 and 18 of the UNTOC Convention to request judicial cooperation in case of crimes that are subject to the present convention.*

48 *In addition, conventions typically foresee a provision allowing Parties to consider the present convention as legal basis for extradition or mutual legal assistance (paragraph 2).*

49 *Negotiators should follow the example of the text contained in this Article unless the specific subject matter of the convention requires specific additional rules on cross-border judicial cooperation. If negotiators consider using a different text or additional provisions on international cooperation in criminal matter they should first seek an opinion by the Committee of Experts on the operation of European Conventions on co-operation in criminal matters (PC-OC).*

Chapter IV – Measures for protection

[Article 14 – Protection of victims

[Each Party shall take the necessary legislative and other measures to protect the rights and interests of victims of criminal offences established in accordance with this Convention, in particular by:

a) ensuring that victims have access to information relevant to their case and which is necessary for the protection of their [rights] [health];
b) assisting victims in their physical, psychological and social recovery;
c) providing, in its domestic law, for the right of victims to compensation from the perpetrators.]

[Article 15 – The standing of victims in criminal investigations and proceedings

1 Each Party shall take the necessary legislative and other measures to protect the rights and interests of victims at all stages of criminal investigations and proceedings, in particular by:

a) informing them of their rights and the services at their disposal and, upon request, the follow-up given to their complaint, the charges retained, the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification, and their role therein as well as the outcome of their cases;
b) enabling them, in a manner consistent with the procedural rules of domestic law, to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented, directly or through an intermediary, and considered;
c) providing them with appropriate support services so that their rights and interests are duly presented and taken into account;
d) providing effective measures for their safety, as well as that of their families, from intimidation and retaliation.

2 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.

3 Each Party shall ensure that victims have access to legal aid, in accordance with domestic law and provided free of charge where warranted, when it is possible for them to have the status of parties to criminal proceedings.

4 Each Party shall take the necessary legislative and other measures to ensure that victims of an offence established in accordance with this Convention committed in the territory of a Party other than the one where they reside can make a complaint before the competent authorities of their State of residence.

5 Each Party shall provide, by means of legislative or other measures, in accordance with the conditions provided for by its domestic law, the possibility for groups, foundations, associations or governmental or non-governmental organisations, to assist and/or support the victims with their consent during criminal proceedings concerning the offences established in accordance with this Convention.]

50 *Typically, recent CoE criminal law conventions provide for rules on the protection of victims (Article 14) as well as the standing of victims in criminal proceedings (Article 15). Where appropriate, considering the specific subject matter of the convention, the particular interests of the victims and the seriousness of the offences described therein, negotiators may choose to insert such articles in the new convention. Where they decide to do so, they should use the model language set out in Articles 14 and 15.*

[**Article 16 – Protection of witnesses**

1 Each Party shall, within its means and in accordance with the conditions provided for by its domestic law, provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings, who give testimony concerning

offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2 Paragraph 1 of this article shall also apply to victims insofar as they are witnesses.]

51 *Article 16 is inspired by Article 24, paragraph 1 UNTOC. It was first introduced as such by the recent CoE THO. Some of the other CoE criminal law conventions included more limited language on the protection of witnesses within the concept of protection of victims.*

52 *Negotiators may choose to insert an article on protection of witnesses, where considered appropriate, taking into account the specific nature of the crime and the situation of possible witnesses.*

Chapter V – Measures for prevention and other administrative measures

Article 17 – Measures at domestic level

Article 18 – Measures at international level

53 *There is no standard wording proposed for articles 17 and 18. CoE criminal conventions typically include more or less extensive provisions on prevention of the types of crimes that are subject to the convention or on other administrative measures which the Parties shall be obliged or encouraged to take in order to combat such crime. These may include measures that shall be taken by each state Party individually at domestic level. They may also include certain measures of international cooperation for the purpose of prevention or combatting such crimes. The judicial cooperation for the purpose of criminal investigations or prosecutions should be regulated separately (c.f. Article 13 of this model text).*

54 *There is no standard language proposed for these Articles. To be noted: when a convention primarily deals with such measures on prevention and administrative cooperation and if addresses substantive criminal law only as a secondary aspect, it may be more suitable to choose a different structure for the convention (c.f. as examples CETS No. 197 and 201).*

Chapter VI – Follow-up mechanism

Article 19 – Committee of the Parties

1 The Committee of the Parties shall be composed of representatives of the Parties to the Convention.

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 for the tenth signatory having ratified it. It shall subsequently meet whenever at least one third of the Parties or the Secretary General so requests.

3 The Committee of the Parties shall adopt its own rules of procedure.

4 The Committee of the Parties shall be assisted by the Secretariat of the Council of Europe in carrying out its functions.

5 A contracting Party which is not a member of the Council of Europe shall contribute to the financing of the Committee of the Parties in a manner to be decided by the Committee of Ministers upon consultation of that Party.

Article 20 – Other representatives

1 The Parliamentary Assembly of the Council of Europe, the European Committee on Crime Problems (CDPC), as well as other relevant Council of Europe intergovernmental or scientific committees, shall each appoint a representative to the Committee of the Parties in order to contribute to a multisectoral and multidisciplinary approach.

2 The Committee of Ministers may invite other Council of Europe bodies to appoint a representative to the Committee of the Parties after consulting them.

3 Representatives of relevant international bodies may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.

4 Representatives of relevant official bodies of the Parties may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.

5 Representatives of civil society, and in particular non-governmental organisations, may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.

6 In the appointment of representatives under paragraphs 2 to 5, a balanced representation of the different sectors and disciplines shall be ensured.

7 Representatives appointed under paragraphs 1 to 5 above shall participate in meetings of the Committee of the Parties without the right to vote.

Article 21 – Functions of the Committee of the Parties

1 The Committee of the Parties shall monitor the implementation of this Convention. The rules of procedure of the Committee of the Parties shall determine the procedure for evaluating the implementation of this Convention, using a multisectoral and multidisciplinary approach.

2 The Committee of the Parties shall also facilitate the collection, analysis and exchange of information, experience and good practice between States to improve

their capacity to prevent and combat …. . The Committee may avail itself of the expertise of other relevant Council of Europe committees and bodies.

3 Furthermore, the Committee of the Parties shall, where appropriate:

a) a facilitate the effective use and implementation of this Convention, including the identification of any problems and the effects of any [declaration or reservation made under this Convention];
b) express an opinion on any question concerning the application of this Convention and facilitate the exchange of information on significant legal, policy or technological developments;
c) make specific recommendations to Parties concerning the implementation of this Convention.

4 The European Committee on Crime Problems (CDPC) shall be kept periodically informed regarding the activities mentioned in paragraphs 1, 2 and 3 of this article.

55 *Several modern CoE conventions on substantive criminal law (contrary to the CoE conventions on cross-border judicial cooperation) foresee a "Committee of State Parties", which is given a number of functions, including the monitoring of the implementation of the convention (c.f. e.g. CETS 198, 201, 211 and THO-Convention). Some conventions go a bit further and foresee a specific monitoring mechanism whereby in addition to the Committee of State Parties, a specific "Group of Experts" is set up which has wider responsibilities in monitoring of the implementation (c. f. e.g. CETS 173, 197 and 210). Other, older conventions don't include any specific rules on "monitoring" but give certain responsibilities to the CDPC (in particular the conventions on judicial cooperation).*

56 *When negotiating the draft conventions, negotiators should consider the advisability of including rules on the monitoring of the convention. Normally, it should be considered sufficient to give certain responsibilities in this respect to the Committee of State Parties. The model text foresees such rules in Articles 21 and 23.*

57 *The text of Article 21 (2) shall include a brief reference to the subject matter of the convention as specified in the clauses on purpose and/or scope (Articles 1 and 3).*

58 *Article 21 (3)(a) needs to be adjusted, dependent on whether the convention foresees certain declarations (e.g. Article 26) or allows for reservations (c.f. Article 27).*

Chapter VII – Relationship with other international instruments

Article 22 – Relationship with other international instruments

1 This Convention shall not affect the rights and obligations arising from the provisions of 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.

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.

Chapter VIII – Amendments to the Convention

Article 23 – 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, the non-member States enjoying observer status with the Council of Europe, the European Union, and any State having been invited to sign this Convention.

2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC) and other relevant Council of Europe intergovernmental or scientific committees, which shall submit to the Committee of the Parties their opinions on that proposed amendment.

3 The Committee of Ministers of the Council of Europe shall consider the proposed amendment and the opinion submitted by the Committee of Parties and, after having consulted the Parties to this Convention that are not members of the Council of Europe, 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 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.

59 *Article 22 and 23 are standard provisions in modern CoE criminal law conventions, which shall be used by negotiators.*

Chapter IX – Final clauses

Article 24 – 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 Union.

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 eight 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 State referred to in paragraph 1 or the European Union, 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 25 – 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 Parties 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.

60 *Article 24 is a standard provision in CoE criminal law conventions. It allows only those non-member States which have participated in its elaboration, to sign the convention before it enters into force. Other non-member States could only be invited to accede to the convention after it entered into force (Article 25).*

61 *If negotiators intend to allow for a possible early invitation to other non-member States, which may want to accede, it could be considered to reduce in Article 24(3) the number of required ratifications e.g. to five.*

Article 26 – Territorial application

1 Any State or the European Union 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 27 – Reservations

Option A

1 [No reservation may be made in respect of any provision of this Convention, with the exception of the reservations expressly established.

2 Each Party which has made a reservation may, at any time, withdraw it entirely or partially by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect from the date of the receipt of such notification by the Secretary General.]

Option B

1 [Any State or the European Union may, at the time of signature or when depositing its instruments of ratification, acceptance or approval, declare that it avails itself of one or more of the reservations provided for in Articles …. .

2 Any State or the European Union may [also], at the time of signature or when depositing its instruments of ratification, acceptance or approval, declare that it reserves the right to apply Articles …. only when/to …. .

3 No other reservations may be made.

4 Each Party which has made a reservation may, at any time, withdraw it entirely or partially by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect from the date of the receipt of such notification by the Secretary General.]

62 *Preferably, CoE criminal law conventions should not allow for any reservations to be made by Parties when signing or ratifying the convention. In case the negotiators are able to find consensus on all provisions of the draft convention, the convention should contain a statement to the effect that "No reservations may be made", which may be*

inserted into Article 27.

63 *Typically, however, CoE criminal law conventions will allow for certain reservations to be made. Negotiators may choose between two options to allow for this: Option A foresees a generic clause referring in general terms to any and all provisions of the convention which expressly allow for reservations to be made. Option B offers two other alternatives: paragraph 1 would be intended to list all those articles, which expressly allow for reservations. And paragraph 2 would be possible language to be used in order to allow Parties to limit the scope of application of certain articles by way of an express reservation.*

Article 28 – Dispute settlement

The Committee of the Parties will follow in close co-operation with the European Committee on Crime Problems (CDPC) and other relevant Council of Europe intergovernmental or scientific committees the application of this Convention and facilitate, when necessary, the friendly settlement of all difficulties related to its application.

Article 29 – 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 30 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States enjoying observer status with the

Council of Europe, the European Union, and any State having been invited to sign this Convention in accordance with the provisions of Article 24, 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 24;
d) any amendment adopted in accordance with Article 23 and the date on which such an amendment enters into force;
e) any reservation made under Articles ….. and any withdrawal of a reservation made in accordance with Article 27;
f) any denunciation made in pursuance of the provisions of Article 29;
g) any other act, notification or communication relating to this Convention.

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

Done in ….., this … day of ….., 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 or enjoy observer status with the Council of Europe, to the European Union and to any State invited to sign this Convention.

64 *Articles 28 to 30 as well as final phrases are standard provision in modern CoE criminal law conventions, which shall be used by negotiators.*