

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (85) 10

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

**CONCERNING THE PRACTICAL APPLICATION OF THE EUROPEAN CONVENTION
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS IN RESPECT OF LETTERS
ROGATORY FOR THE INTERCEPTION OF TELECOMMUNICATIONS**

*(Adopted by the Committee of Ministers on 28 June 1985
at the 387th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that it might be necessary to resort to the interception of telecommunications such as telephones, teleprinters and telecopiers for the purpose of investigating criminal offences ;

Stressing the necessity to protect the individual against unjustified interceptions ;

Recognising the importance of international mutual assistance, particularly in the fight against international crime ;

Having regard to the European Convention on Mutual Assistance in Criminal Matters ;

Desirous of facilitating the practical application of that convention ;

Considering that the specific nature of letters rogatory for the interception of telecommunications requires detailed regulation, particularly with regard to the manner of their execution, the transmission of the records resulting from the interception and the use of those records in the requesting state ;

Desirous in this respect of providing guidance to Contracting States, with a view to promoting uniform application of the convention and ensuring, as far as possible, equality of treatment of warrants emanating from national judicial authorities and requests made under the convention by judicial authorities in other Contracting States,

I. Recommends the governments of member states party to the European Convention on Mutual Assistance in Criminal Matters to be guided, in its practical application, by the rules annexed to this recommendation ;

II. Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of those Contracting States which are not members of the Council of Europe.

Appendix to Recommendation No. R (85) 10

In accordance with the provisions of the European Convention on Mutual Assistance in Criminal Matters (hereinafter referred to as "the convention") and without prejudice to them, the following rules apply to letters rogatory concerning the interception of telecommunications, that is to say the interception of messages conveyed through telephones, teleprinters, telecopiers and similar means of communication, and the transmission of records relating thereto. They are intended to assist Contracting States to comply with their obligations with regard to such letters rogatory.

1. The execution of such letters rogatory should be refused only for the following reasons :
 - a. if, according to the law of the requested Party, the nature or gravity of the offence or the status of the person whose telecommunications are to be intercepted do not permit the use of this measure ;
 - b. if, in view of the circumstances of the case, the interception would not be justified according to the law of the requested Party governing the interception of telecommunications in that state.
2. Requests for assistance should, in addition to the indications mentioned in Article 14 of the convention, contain the following information :
 - a. a description, as precise as possible, of the telecommunication to be intercepted ;
 - b. an indication why the purpose of the request cannot be adequately achieved by other means of investigation ;
 - c. an indication that the interception has been authorised by the competent authority of the requesting Party ;
 - d. an indication of the period of time during which the interception is to be effected.
3. If the period for which interception is requested exceeds the period for which an order is, or may be, issued according to the law of the requested Party, that Party should so inform the requesting Party without delay and indicate possibilities, if any, for extending this period.
4. The requested Party might make the execution of letters rogatory dependent on one or more of the following conditions :
 - a. that the judicial authorities of the requested Party may destroy those parts of the records which, in view of the object and reason of the request, cannot be of any relevance to the criminal proceedings in respect of which the request has been made, before transmitting the records to the requesting Party ;
 - b. that the judicial authorities of the requesting Party shall as soon as possible destroy those parts of the records which are of no relevance to the criminal proceedings in respect of which the request has been made and shall transmit a copy of the report on the destruction to the requested Party ;
 - c. that, after the requested interception has taken place, the authorities of the requested Party will, in accordance with the law and practice of that Party, so inform the subscriber to the telecommunication facility which has been intercepted or any other person concerned ;
 - d. that the evidence contained in the records resulting from the interception will not be used by the authorities of the requesting Party for purposes other than those underlying the letters rogatory in respect of which assistance has been granted.
5. If it appears from the records resulting from the interception that the offence in respect of which the request for assistance has been made was committed wholly or mainly within the territory of the requested Party, the requesting Party should consider the possibility of laying information to the requested Party, in accordance with Article 21 of the convention.