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Explanatory Report to the European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters

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I. The European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters, drawn up within the Council of Europe by a committee of governmental experts under the authority of the European Committee on Legal Co-operation (CDCJ), was opened to signature by the member States of the Council of Europe on 15 March 1978.

II. The text of the explanatory report prepared by the committee of experts and submitted to the Committee of Ministers of the Council of Europe, as amended and completed by the CCJ, does not constitute an instrument providing an authoritative interpretation of the Convention, although it might be of such nature as to facilitate the understanding of the provisions contained therein.

Introduction

1 . Owing to the large number of people who are living in foreign countries and the length of their stay in those countries, it is often necessary for the authorities of one State to assist those of another State in carrying out its tasks with regard to those persons.

Save for some international conventions, each of which binds only a more or less restricted number of the member States of the Council of Europe, mutual assistance between administrative authorities of different states is based mainly on informal or *ad hoc* arrangements which have been prompted by practical necessity as well as by neighbourliness. Mutual assistance in administrative matters is less developed than mutual assistance in civil, commercial or criminal matters; it has seldom been systematised except in some narrowly defined fields.

2. For this reason, in 1963 the Committee of Ministers of the Council of Europe included the problem of mutual assistance in administrative matters in its Resolution (63) 29 concerning the legal programme of the Council of Europe.

The matter was taken up in 1969 in the framework of the activities of the sub-committee to review the legal programme of the European Committee on Legal Co-operation (CCJ). The next step was its examination by the 2nd Colloquy on European Law which was organised in 1971 at Aarhus (Denmark) following a decision of the Committee of Ministers. The work of the colloquy was based on the replies by governments to a questionnaire on international mutual assistance in administrative matters as well as on papers presented by MM. M. Fromont, J. Gersing and E. Loebenstein.

3. In 1975, the Committee of Ministers decided, on the proposal of the CCJ, to set up a Committee of Experts on Mutual Assistance in Administrative Matters to study the possibility of drawing up appropriate legal instruments dealing with:

a. the service abroad of administrative documents emanating from one State and intended for persons residing in another State; as well as

b. improvement of means whereby the authorities of one State may obtain information from the authorities of another State;

and to determine the administrative fields to which these new instruments should apply.

4. The committee of experts held four meetings in 1975 and 1976 under the chairmanship of Professor J. Voyame (Switzerland); the Vice-Chairman was Mr L. Chatin (France). It set up a working group presided by Mr L. Chatin and composed of Mr K. Berchtold (Austria), Mrs B. Lynaes (Denmark), Mr St. Cantono Di Ceva (Italy) and Mr J. S. Dixon (United Kingdom), which held two meetings in the summer of 1975. In 1977 a new committee of experts on mutual assistance met to give final consideration to the draft of the present Convention.

The committee of experts began its work with a general discussion on the basic principles by which its activities should be guided. It carefully examined the various aspects of the problem, including the question of how many and what kind of legal instruments were to be elaborated; it took into account the fact that the CCJ had already ruled out the idea of a single international instrument which would cover the entire field of mutual assistance in administrative matters. The committee of experts decided to proceed by elaborating two draft conventions, the first one dealing with the service abroad of documents relating to administrative matters and the second one with the obtaining abroad of information and evidence in administrative matters.

5. Although the former has a direct bearing on relations between administrative authorities and the individual, whereas the latter deals mainly with the means of co-operation between administrative authorities inter se, the committee was of the opinion that the two conventions are closely linked, particularly in view of the similarity of the solutions adopted. For this reason, it devoted particular attention to problems of consistency between the two texts and with other multilateral international conventions on mutual assistance in civil and commercial matters on the one hand and criminal matters on the other.

6. The main preoccupation of the committee of experts was to fill in the gaps between other existing international conventions and at the same time to avoid overlapping with them, so as to establish a coherent conventional framework on which international mutual assistance between the member States could be based.

7. Special attention was given, when the European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters was being elaborated, to the Hague Conventions on Civil Procedure of 1 March 1955 and on the Taking of Evidence Abroad in Civil or Commercial Matters of 18 March 1970, as well as the European Conventions on Information on Foreign Law of 7 June 1968 and on Mutual Assistance in Criminal Matters of 20 April 1959, particularly with regard to the mutual assistance machinery and certain forms of assistance provided for in this Convention, such as requests for information on law and practice and letters of request in administrative matters.

8. During its work the committee of experts benefited from the attendance at its meetings of an observer from the Permanent Bureau of the Hague Conference on Private International Law.

Commentary on the provisions of the Convention

Chapter 1 – General provisions

Article 1

9. This article determines the obligations of the Contracting States and the scope of the Convention.

Under paragraph 1, every Contracting State undertakes to render the necessary assistance to any other Contracting State in administrative matters in response to requests for information on its law, regulations and customs, requests for factual information and for documents, requests for enquiries to be made and letters of request in administrative matters.

10. The decisive criterion of the scope of the Convention is not the formal status of the organs involved, but rather the function they exercise. Although in most cases administrative matters fall within the province of administrative branches of the executive, they are in some instances also dealt with by judicial bodies.

Since the structure of public administration varies considerably from one State to another, it would have been very difficult and indeed, inopportune, to try to determine in the Convention the types of bodies competent to render each other mutual assistance.

11. As to the scope of the Convention ratione materiae, it will be observed that no positive definition of administrative matters has been provided in the Convention. The absence of such a definition is explained by the fact that "administrative matters", which may have an imprecise connotation within one legal system, varies even more between one State and another. However, it is understood that the definition of this subject for purposes of applying the Convention will be determined by the requesting State in accordance with its domestic law, with the proviso that the requested State may refuse to comply under the terms of Article 7.

It was therefore felt preferable to leave to the appreciation of the Contracting States whether to expand or restrict the scope of the Convention by making use of the options provided in paragraphs 2 and 3 of the article.

12. Paragraph 2 provides for the exclusion from the scope of the Convention of fiscal and criminal matters.

Although fiscal matters can in most cases be considered to form part of the administrative field, their exclusion from the scope of the Convention is due in particular to the very special and complex character of this field, which is already covered by a network of fairly detailed and sophisticated conventions, especially bilateral ones.

Criminal matters have however been excluded *expressis verbis* in order to remove any doubt that might arise as to the application of the Convention to certain offences under the law, the prosecution of which is not within the competence of judicial authorities.

13. The second part of paragraph 2 allows any Contracting State to extend the scope of the Convention to fiscal matters" andlor "proceedings in respect of offences the punishment of which does not fall within the jurisdiction of its judicial authorities at the time of the request for assistance". The latter expression denotes the area between administrative and criminal matters, which in certain States is known under the name of "administrative criminal law" (such as for instance the *Ordnungswidrigkeit in* German law). The expression just cited, which was borrowed *mutatis mutandis* from the European Convention on Mutual Assistance in Criminal Matters, was chosen in order to avoid the risk of creating gaps and also in order to ensure full compatibility between the two Conventions. It refers not only to proceedings which

include, after an administrative phase, a judicial phase, but also to proceedings concerning punishable offences which take place exclusively before administrative authorities.

It should be emphasised that the possibility of broadening the Convention's scope so as to include the matters mentioned above has a purely passive meaning in that States which do so undertake to give effect to requests for assistance in these fields addressed to them by other Contracting States. Nevertheless, States may make their undertaking conditional on reciprocity and may refuse to give effect to requests emanating from States which do not accept the same extension of the scope of the Convention.

States which want to make use of the option given to them in paragraph 2 may address a declaration to that effect to the Secretary General of the Council of Europe at the time when they deposit their instrument of ratification, acceptance, approval, or accession or indeed at any later date.

14. Paragraph 3 has the function of enabling States, which so desire for reasons of their legal system or practice, to exclude certain administrative matters from the scope of the Convention, such as, for example, electoral or military matters, etc. Such a restriction of the scope is obtained by means of a declaration which the State in question addresses to the Secretary General of the Council of Europe, at the moment of signature or when it deposits its instrument of ratification, acceptance, approval or accession, or at any time within five years following the Convention's entry into force in respect of itself.

The possibility of making such a declaration has been restricted to five years in order not to prolong the uncertainty which a longer, or an indefinite, period would entail, as regards the relations between the Contracting States.

15. The possibility of exercising these options was introduced in order to make the instrument more flexible so as to respond to practical needs and to the difficulties which Contracting States might encounter as a result of the application of the Convention. It should be taken into account in this connection that the administrative field is extremely large and that the Convention will be introducing important innovations into this field. It was therefore considered expedient to leave to each Contracting State control over the scale and timing of its bringing into effect.

16. Paragraph 4 determines the moment at which the declarations referred to in this article will take effect and also the procedure to be followed for their withdrawal.

Article 2

17. This article deals with the machinery to be established in order to give effect to the Convention.

Since it is the aim of the Convention to establish a legal basis for the obtaining abroad of information and evidence relating to administrative matters which has hitherto been based mainly on international courtesy, it was felt indispensable to set up a system of transmission of requests via a central authority.

Such a system offers to the requesting authority the advantage that it is relieved of the task of finding out which authority in the requested State is competent to give effect to the request for assistance. Moreover, the setting up of the central authority will ensure that there is compliance with the law of the requested State by enabling that State to control the requests coming from abroad,

18. In accordance with paragraph 1, every Contracting State will have to designate a central authority. The internal organisation of the central authority is left to the State which has established it, i.e. the requested State.

The functions of the central authority are:

a. to receive requests for assistance coming from other Contracting States;

b. to take action on these requests.

19. With regard to the receipt of requests, which maybe formulated by administrative authorities or tribunals or any other bodies which exercise judicial functions in administrative matters, it should be noted that, although this is mainly the function of the central authority, its competence in this matter is not exclusive. The Convention leaves open, in addition to this primary or normal channel of transmission, other subsidiary channels, viz. in order: direct communication between authorities with an agreement or arrangement as is mentioned in Article 12, or the carrying out of letters of request by diplomatic or consular channels as provided for in Article 22.

20. The action which a central authority may have to undertake consists not only in complying with the request, a task which, if necessary, may be entrusted to another competent authority or even to a private body or qualified lawyer (Article 17), but also and above all in checking whether the request has been properly made (Article 6) and whether there are grounds for refusing to comply (Article 7), informing the requesting authority about delays in the reply (Article 10), checking whether the request has been made for an administrative purpose (Articles 13, 14 and 15), asking the requesting authority to use the requested information only for the purpose specified (Article 16), and finally, in checking the compatibility of requests for the execution of letters of request with the provisions of Articles 19 and 20.

The last sentence of paragraph 1 makes it possible for federal States to have a central authority for each member State of the Federation.

21. Although there is in principle only one central authority, paragraph 2 opens up the possibility for Contracting States to designate, in addition to the central authority, which must in any case be established, other subsidiary authorities on a purely territorial basis. This provision meets the current trend in many European States to decentralise the administration of government. In such a case, the requesting State may always address itself to the central authority without that forming a ground for considering the request inadmissible or for refusing to carry it out. The term "central authority" which is used in the Convention covers also the subsidiary authorities which some Contracting States may set up.

22. Paragraph 3 provides for the optimal designation by a Contracting State of a forwarding authority. It was recognised that the existence of a forwarding body in the Contracting States might greatly facilitate the implementation of the provisions of the Convention, particularly in that it would attest to the authenticity of requests coming from authorities of the requesting State and would exercise initial control in the establishment of the conformity of requests with the Convention.

This paragraph provides, on the lines of paragraph 1, an option for federal States to designate more than one forwarding authority. However, there is no provision comparable to that laid down by paragraph 2 which allows the setting up of subsidiary authorities under the forwarding authority.

23. Under the terms of paragraph 4, the central authority and the forwarding authority whether newly created or already in existence must each be either a ministerial department or another official body. This requirement provides security which is one of the basic elements of the system of mutual assistance. The task of these authorities is not limited to receiving and forwarding requests, but may also include in particular checking their conformity with public policy (Article 7), checking the quality of the reply, particularly where it has been drawn up by a private body or a qualified lawyer not belonging to the public administration (Article 17), and checking the status of the authority from which the request emanates (Article 19), and it was

felt necessary that this element of control should be exercised by an official authority. This is why the authorities need to be of a high enough level.

24. With regard to paragraph 5, it is understood that each Contracting State should communicate to the Secretary General of the Council of Europe, at the time of deposit of its instrument of ratification, acceptance, approval or accession, the name and address of the authorities designated in conformity with the provisions of this article, so as to enable effect to be given to the Convention. Any subsequent change in the name or address of these authorities should of course also be communicated.

Article 3

25. This article exempts the documents forwarded in pursuance of the Convention from legalisation or any other equivalent formality, such as a certificate (*apostille*), issued by the competent authority of the State from which the document emanates, as provided for in the Hague Convention abolishing the requirement of legalisation of foreign public documents of 5 October 1961.

This article is a step forward in compliance with one of the most important objectives of the Convention, viz. simplification and expediency.

Article 4

26. This article sets out the obligations of the central authority with regard to the reply. It imposes a positive duty to act on a request for assistance as opposed to the principles of international courtesy on which relations between authorities of different States are normally based.

27. This positive duty consists of either replying to the request, if the central authority is itself competent, or of transmitting it to the competent authority. In the latter case, however, the transmission of the request does not release the central authority from the obligation of taking action on it since the authority remains responsible for checking the quality of the reply as well as ensuring that proper effect will be given to the request, particularly where the reply is prepared outside the administrative machinery of the State (Article 17, paragraph 2).

The expression "subject to the provisions of this Convention to the contrary", refers to the exceptions to the obligation to reply, for example, in cases of an irregularity of the request or a refusal to comply with it as provided for in Articles 6 and 7.

Article 5

28. It follows from this article, which deals with the content of the request, that it should be drawn up as clearly as possible so as to facilitate compliance with it by the requested authority.

The request should, of course be drawn up in one of the languages provided for in Article 9.

Article 6

29. This article deals with one of the functions of the central authority: to check whether the request is in order at the stage of its admissibility.

The wording of this provision shows clearly that it does not so much concern defects of substance which might be a ground for refusing execution, but rather formal defects.

Examples of such defects which might lead to a non-conformity of the request under this article are: the omission of one of the items of information mentioned in Article 5 necessary for the execution of the request, or the failure to respect the rules in Article 9 concerning languages.

30. Where the requested central authority is of the opinion that the request does not conform with the provisions of the Convention, it must promptly inform the requesting authority so that the latter can without delay complete its request or give further details, as the case may be.

Moreover, the central authority must specify its objections to the request; this will permit the requesting authority to remedy more easily the mistake. This obligation is intended to prevent an arbitrary refusal by the requested authority; it will not be permitted to raise objections to the request without giving reasons.

Article 7

31. Paragraph 1 of this article contains certain exceptions to the obligation to take action on requests for assistance drawn up in conformity with the provisions of the Convention.

Sub-paragraph a allows the requested authority to refuse to comply with a request for assistance where it is of the opinion that the request does not relate to an administrative matter in the sense of Article 1 (see the explanatory note on that article).

It was considered useful to introduce such a provision in order to provide some rules for cases where the requested State refuses for this reason to take action on the request.

32. A second ground for refusal is provided for in sub-paragraph b, according to which a request can be refused if compliance would interfere with the sovereignty, security, public policy, or other essential interests of the requested State.

By the introduction of the clause concerning public policy, the central authority of the requested State is given the possibility of refusing to carry out a request when such compliance, while not prejudicing the sovereignty or security of that State, might be harmful to the principles on which its legal system is based.

Moreover, it was felt preferable to relieve the requested State from the obligation to reply if other of its essential interests might be adversely affected by compliance with the request so as to avoid, on the one hand, doubt being cast on the impartiality of its reply and, on the other hand, its being obliged to furnish to the foreign administrative authority assistance that might harm its own interests. The expression or "other essential interests" is fairly broad and covers not only political interests but also financial or economic interests.

33. Sub-paragraph c is more concerned with the protection of the rights of the individual. The term "compliance", which is also used in the preceding sub-paragraph, should be understood in the broader sense as covering not only the reply itself but also the action preceding it. So, for example, in the case of a request for information, the requested State might wish to refuse to take action, not only if transmission to the requesting authority of the information asked for might be harmful to the rights of the individual, but also if the very fact of collecting the information might prejudice his rights.

The words "essential interests" are designed to afford additional protection for the individual. They refer for example to cases where the central authority of the requested State, in assessing the question of the protection of the individual, may take into consideration the fact that the information is meant for a foreign authority.

The second part of this sub-paragraph deals specifically with the protection of the privacy of the individual. Therefore, by way of example, the requested authority may refuse to act on a request if it concerns information which under its domestic law is restricted by rules of professional secrecy. Moreover, the wording of this sentence also allows the requested State to refuse to act on a request in cases where the requested information, although not strictly covered by a legal regime of protection, should not be communicated because it is confidential.

34. Sub-paragraph d is an additional safeguard establishing that the mutual assistance in administrative matters which the Contracting States have undertaken to afford each other should not be contrary to the domestic law or the customs of the requested State.

Paragraph 2 contains an important restriction on the discretionary powers of a requested authority which wishes to invoke any of the exceptions provided for in this article; for it is obliged to inform the requesting authority as soon as possible, stating the broad reasons for its refusal to take action on a request.

Article 8

35. This article deals with the costs which a reply to the request for assistance may entail.

As a general rule the procedure will be free of charge. However, exceptions are admitted for sums due to experts and interpreters (Article 18, paragraph 1, and Article 21) and in cases when a reply is prepared by a private body or qualified lawyer not belonging to the public administration (Article 18, paragraph 2) or when a particular form of procedure is used at the request of the requesting authority and gives rise to special costs (Article 21).

Article 9

36. This article deals with the language in which a request for assistance, and the appendices if any, is to be drawn up or translated.

As is apparent from paragraph 1, the principle adopted in this context is to facilitate the task of the requested State by having requests for assistance drawn up or translated into its own language or one of its official languages.

This imposition on the requesting authority appeared equitable taking account of the fact that the cost of services rendered by the requested authority will generally not have to be reimbursed by the requesting authority.

37. As an alternative, paragraph 2 obliges the requested authority to accept a request drawn up or translated into French or English. This possibility offers a compromise solution, particularly in cases where the official language of the requested authority is not widely known.

This provision, which is intended to avoid practical difficulties which might hamper or slow down mutual assistance, is nevertheless subject to the important proviso that the requested authority may object to it. Such an objection cannot be raised generally but only case by case. It will result in the request being returned to the requesting authority.

38. The requested authority also has a favoured position as regards the language in which the reply is drawn up: under paragraph 3 it may use its own language, English or French, or the language of the requesting State.

The possibility of replying in one of the official languages of the Council of Europe or that of the requesting State has been provided in order to simplify mutual assistance in the same way as was done in paragraph 2; it is based on international courtesy.

Article 10

39. Paragraph 1 of this article aims at accelerating as much as possible compliance with requests for assistance.

Paragraph 2 concerns the transmission of the reply to a request for assistance.

When this article was drawn up, two principal objectives of the Convention were particularly taken into account: simplification and expediency of the procedure. In this connection it was felt preferable not to indicate in the article the authority which should despatch the reply. This authority will normally be the central authority. Nevertheless, nothing in the text of this article will prevent the central authority from asking the authority which has drawn up the reply (in conformity with Article 17), particularly when such authority is an official body, to send that reply directly to the requesting authority.

40. The words "the requesting authority" indicate, as the addressee of the reply, the forwarding authority, if any (see Article 2, paragraph 3), or the authority which has formulated the request for assistance, or the diplomatic or consular authority in cases where the requesting State has made use of the option in Article 11.

It is understood that the reply will be despatched by post.

Article 11

41. This article allows diplomatic or consular channels to be used for transmission of requests for assistance.

The diplomatic channel envisaged in this article does not correspond to the classical diplomatic channel which consists of the handing over of a request for assistance by the diplomatic representative to the Ministry of Foreign Affairs of the requested State. The article specifically provides that requests for assistance should be handed to the central authority of the requested State. Consequently, requests for assistance cannot be handed directly to the competent authority of the requested State as in the case of the direct consular or diplomatic channel, a channel which has not been provided for by the present Convention.

In practice, the requesting State will normally entrust its consular officers with transmitting the request to the central authority and only in the absence of a consular office will its diplomatic agents become involved.

Article 12

42. This article is intended to safeguard the provisions of other present or future international instruments, bilateral or multilateral, which regulate in certain fields the matters covered by the present Convention.

This clause also covers practices which have been established or may be established in future, between the administrations of Contracting States and which have not been formally spelt out in international agreements, as well as unilateral practices with regard to assistance.

It was felt useful to provide in the Convention that Contracting States may derogate from it, for example by setting up special language arrangements or establishing direct communication between local authorities, etc.

Chapter II – Requests for information, documents and enquiries

Article 13

43. This article deals with the information on law, regulations and customs (the latter in so far as they can be considered legal rules) in administrative matters which Contracting States have agreed to furnish each other. It is not intended to apply to administrative practices in the sense of policies followed by administrative authorities. This article has been elaborated along the lines of the European Convention on Information on Foreign Law of 7 June 1968 and is a useful supplement to that Convention. In fact, that Convention is only applicable to information concerning law and procedure in civil and commercial matters, and its Protocol of 15 March 1978 to information concerning law and procedure in the criminal field.

This form of mutual assistance, as well as that provided for by the 1968 Convention, will take the place of certificates of custom which were formerly delivered by consular officials.

44. The expression "their law, regulations and customs in administrative matters" covers also administrative justice.

Under the terms of this article, requests for information may also concern a law, regulation or custom formerly in force, for it has not been stipulated that the law, regulation or custom to which the request refers should be in force at the moment when that request is made.

45. The reply given by the requested authority could be accompanied by explanatory comments and take the form of an account of the application in the requested State of the legal rules or customs concerned. However, the author of the reply will never be bound to furnish such an account, even if the requesting authority so requests.

46. The reply should not only be impartial, but also objective; in other words it should refrain from proposing a solution for the case in connection with which the request has been made.

47. The article also lays down certain conditions as to the request itself.

A double criterion has been established: the request should be made for an administrative purpose, a question to be determined by the requested central authority, and it should emanate from an authority of the requesting State. The meaning of the term "authority" should be determined according to the domestic law of the requesting State. The absence of any qualification of this term means that it covers administrative organs as well as authorities exercising judicial functions in administrative matters. Nevertheless, the term also clearly excludes requests emanating from a private body, an individual or a party to a case.

Article 14

48. The supervision which the requested State will exercise over action taken on requests for factual information and for documents is especially important because the latter are likely to affect fundamental rights or essential interests of individuals, the protection of which is guaranteed by Article 7, paragraph c. In view of the absence of an express indication of the categories of persons with respect to whom information or documents may be requested, it is clear that requests may relate both to the requesting State's own nationals and to nationals of the requested State or of third States.

The expression "by an authority of the requesting State for an administrative purpose" should be interpreted in the same sense as has been indicated in the commentary to Article 13.

Article 15

49. Whereas Article 14 deals with the "static" aspects of a request, i.e. requests pertaining to information which is already in the administration's possession, Article 15 deals with the "dynamic" aspect of a request, i.e. where its reply necessitates a specific action on the part of the requested authority in order to obtain the information or the document requested.

The action which the requested authority may have to take under this article may consist of an enquiry, which by definition means "search for information", or any other appropriate procedure without, however, using any compulsory powers. The latter term covers any procedures which in some States are not considered as "enquiries" in the traditional sense of the term, for example, visits to the premises, enquiries about moral or social behaviour, certain administrative verifications, etc.

For a requested State to be bound to give effect to a request, the procedure to be followed in order to obtain the information must be provided for or at least permissible under its domestic law. Put another way, it is not necessary that the procedure be provided for expressly in its legislation for the case in point. On the other hand, pursuant to paragraph 1. d of Article 7, the requested State may refuse to comply with the request should it be contrary to its domestic law or customs.

The expression "by an authority of the requesting State for administrative purposes" should be understood in the same sense as has been indicated in the commentary to Article 13.

Article 16

50. Paragraph 1 of this article sets out an important rule to be respected by the requesting authority with regard to the use of information or documents obtained by virtue of the Convention.

If there were no such rule, nothing would prevent a requesting authority which has obtained information or a document from using it for purposes other than those which it had indicated in its request, including its transmission to an authority which by its nature, or in view of the use it could make of the information, would not have been entitled to formulate the request.

Consequently, it was felt necessary to introduce this provision which gives the requested State an additional possibility to ensure proper observance both of the scope of the Convention and of the fundamental rights of the individual. Where the requested authority is of the opinion that the requested information or document is likely to be used in fields which are excluded from the scope of the Convention (for example, in fiscal or military matters), or used for purposes other than those for which the request had been made and thereby to interfere with the rights of the individual, it can stipulate that the requesting authority shall respect the stated purpose.

51. The words "upon a stipulation by the requested authority" mean that the requested authority must ask in every individual case that the requesting authority should not use the information or document for other purposes. This solution makes it possible to take into account the special requirements of some States which, on account of their system of openness of administrative files, would not have been in a position to accept a generally formulated obligation. Moreover, the solution adopted will help to avoid the machinery instituted by the Convention becoming too cumbersome as a result of the imposition of the principle of the specific purpose of the requested information for all information or documents furnished, including information on law or customs or other information, a different use of which would in no manner prejudice the rights of individuals.

52. Paragraph 2 stipulates that States which cannot undertake to ensure compliance with this rule, because their legislation does not make it possible for them to do so, may formulate a reservation to this article.

Paragraph 3 relieves the requested State from the obligation to give effect to a request emanating from the authority of a State which has made a reservation of this kind. In accordance with this provision, the requested State may decide on a case-by-case basis, taking account of the nature of the information or document, whether or not to comply with the request.

Article 17

53. This article establishes the procedure to be followed by the central authority with regard to the drawing up of the reply. Paragraph 1 deals with the case where the reply is drawn up within the administration of the State. It is up to the central authority to choose between two possibilities offered by this paragraph, i.e. to formulate the reply itself or to send the request on to another authority which is competent to reply.

54. Moreover, under the terms of paragraph 2, the central authority may entrust the task of drawing up the reply to a private body or qualified lawyer.

The expression "in appropriate cases or for reasons of administrative organisation" enables every State, taking into account in particular its internal organisation, to choose freely from among the methods indicated in this article the one best adapted to the particular case.

55. However, the option left to the central authority to select any of the means provided for in this article should not result in the reply being entrusted systematically to a private body or qualified lawyer, thus creating a certain lack of balance in the financial consequences of the application of the Convention in view of the provisions of Articles 8 and 18, paragraph 2. For this reason, a condition has been placed on the power of the central authority to hand over the request to a private body: the requesting authority must have previously agreed to this procedure. There should, however, be no need for such agreement if the central authority has no intention of seeking reimbursement for the costs caused by the assistance in question.

Article 18

56. This article contains an exception to the general rule, set out in Article 8, according to which mutual assistance shall be without cost.

It deals with two distinct cases in which the requesting State will be required to reimburse the costs. Paragraph 1 concerns the payment of costs resulting from services rendered by experts or interpreters.

It was not considered appropriate to require the requesting State to pay the costs which might arise from the hearing of witnesses, such an obligation being contrary to the practice and modern rules of mutual assistance.

57. Paragraph 2 concerns the payment of costs in cases where the central authority has, in accordance with Article 17, paragraph 2, asked a private body or a qualified lawyer outside the administration to draw up the reply to a request for information on a point of law. The only limitation in this paragraph to the obligation to repay costs is that the requesting authority should have given its prior consent.

58. This article does not regulate either the method of payment or the system for recovery of the costs by the requesting State. As regards the question of payment, it was not felt necessary to spell out in the Convention to whom the amount should be paid (for example, the central authority, the expert, the lawyer, etc.); it was preferred to leave it to practice. As regards the question of recovery of costs, it was considered to be a matter for the internal legal system of each State.

Chapter III – Administrative letters of request

Article 19

59. The expression "any other authority exercising judicial functions in administrative matters", contained in paragraph 1 of this article, refers to those organs which, according to the domestic law of some States, are competent to obtain evidence - and therefore also to have evidence taken by means of letters of request - under compulsion and under oath in administrative matters.

60. A "letter of request" in the sense of this paragraph means the task entrusted by an administrative tribunal or an authority exercising judicial functions in administrative matters to a foreign authority to take evidence on its behalf, particularly the hearing of witnesses or of experts, the taking of declarations under oath, etc.

One limitation on the taking of evidence by letter of request is laid down in the last phrase of this paragraph, viz. that procedure should be available for the case in question in the requested State. The expression "may be employed" was preferred to "exists" because even if the procedure in question does not exist in the law of the requested State, it will suffice that it should be permitted.

61. It is stated in paragraph 2 that a letter of request shall not be used unless the evidence which it is designed to obtain is for use in proceedings that have commenced or are contemplated. This provision represents a safeguard for the requested State, which in this way has an additional means of control over the proper use by the requesting State of the evidence obtained at its request. This paragraph will nonetheless be only rarely applied, since it is hard to imagine that an "administrative tribunal or any other authority..." will ask the central authority of another State to obtain evidence by letter of request through mere curiosity. In that eventuality the requested may reject the request.

62. The requested State may furthermore refuse, under the terms of paragraph 3, to execute the letter of request if execution of the letter does not fall within the functions of an administrative tribunal or any other authority exercising judicial functions in administrative matters. This paragraph is an important supplement to paragraph 1.a of Article 7, because of the introduction of a refusal based on the examination of the functions of the authority likely to execute the letter of request and also, consequently, of an additional means of control over the field of application of the Convention.

Article 20

63. This article concerns the law applicable for the execution of letters of request and the possibility for the requesting authority to ask for a particular form of procedure for its execution, as well as privileges to refuse to give evidence.

64. Paragraph 1 provides that the competent authority of the requested State which is charged with carrying out the letters of request shall do so in conformity with its domestic law.

65. Under paragraph 2 the requesting authority may ask the requested authority to carry out the letters of request according to a particular form of procedure. However, the requested authority may refuse this request if the particular method is incompatible with its law or customs. In such a case the requested central authority should of course inform the requesting authority in accordance with the provisions of Article 7, paragraph 2, which remains applicable in full, as indeed do all the articles in Chapter 1.

66. It should be pointed out that the notion of compatibility with the internal law of the requested State is used in this article in the sense that the requested authority may employ the particular form of procedure requested, even if it does not exist or is not expressly permitted for such a case in its internal law, so long as it is not contrary to its law.

The request by the requesting authority for a particular form for executing the letter of request involves that it should bear any costs in conformity with Article 21, last sentence.

67. Paragraph 3 serves to protect the rights of witnesses by providing that the requested State may refuse to have the letter of request executed if the person concerned has a privilege or duty to refuse to give evidence. It is necessary, however, for the legislation of the requested or requesting State to provide for such a privilege or duty. In the latter case, and in order to avoid the difficulties of familiarity with foreign law, the privileges or the duties to refuse to give evidence must be stated in the letter of request or must be attested, at the instance of the requested authority, by the requesting authority.

Article 21

68. This article contains a second exception (see also Article 18) to the general principle that administrative mutual assistance shall be free of charge as stated in Article 8. There are two specific cases.

The first concerns costs arising from services rendered during the execution of letters of request by experts or by interpreters; these costs are to be paid by the requesting State.

The second case concerns the reimbursement by t he requesting State of costs arising from the application of a special form of procedure in accordance with Article 20, paragraph 2. It was considered reasonable to require the requesting authority to bear the costs arising from a procedure, perhaps a complex one, which is taken at its request in order to satisfy its own interest.

69. It should be noted that in no case can costs incurred by the hearing of witnesses be claimed from the requesting State. It was considered that travel costs involved in the hearing of witnesses should remain at the expense of the requested State, particularly taking into account their relatively moderate level, the Convention only foreseeing the hearing of witnesses who are within the territory of the requested State.

With regard to the method of payment and of recovery of costs, see the commentary on Article 18.

Article 22

70. This article provides an alternative to the machinery for the execution of letters of request set out in the other provisions of this chapter; it provides for the obtaining of evidence directly by diplomatic agents or consular officials.

The purpose of this provision is to facilitate to the maximum extent the taking of evidence abroad and to codify in this Convention, in an optional form, a useful procedure for the taking of evidence which exists in international practice and has already been recognised in other conventions such as the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of 18 March 1970 and the European Convention on Consular Functions of 11 December 1967. It differs from the provisions of Article 11, which lays down a general rule and is therefore also applicable to letters of request, because that article deals only with the classical form of transmission through the diplomatic or consular channel.

The advantage which States can derive from using their diplomatic agents or consular officials for the execution of requests emanating from the authorities mentioned in Article 19, paragraph 1 is nevertheless not as far-reaching as that which will result from the ordinary system established in this chapter, because diplomatic agents and consular officials cannot apply any measures of compulsion.

71. The use of the facility opened to Contracting States by this article is subject to the possible objection of the State on the territory of which the evidence is to be taken.

Given the lack of any details in this article as to the grounds for such objections, it can be assumed that the State on whose territory the letter of request is to be executed may object either generally or in specific cases either because of the nature of the letter to be carried out or because of the nationality of the person concerned. It may also make the execution of requests subject to a system of previous authorisation, to be granted in each individual case. In this respect, it should be noted that most member States of the Council of Europe do not permit diplomatic agents or consular officials to execute letters of request concerning persons other than nationals of the State they represent.

Chapter IV – Final provisions

72. The final provisions, laid down in Articles 23-29, follow the model final clauses for conventions and agreements elaborated by the Council of Europe, except for Article 24 dealing with revision of the Convention.

73. In view of the important innovations which this Convention has introduced into the field of mutual assistance in administrative matters, it was considered appropriate to include a revision clause allowing Contracting States, in the course of a consultation organised at the Council of Europe, to take stock of its application in the light of the practical experience which will have in the meantime been gained. On this occasion, particular attention will be able to be given to the advisability of consolidating certain provisions – especially those relating to the Convention's scope – which have in the present text been worded in a flexible manner and of making any further improvements which may be necessary.