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26th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

Helsinki (7-8 April 2005)

**FOLLOW-UP TO RESOLUTION No. 1 ON
COMBATING TERRORISM,
ADOPTED IN SOFIA AT THE 25TH CONFERENCE
OF EUROPEAN MINISTERS OF JUSTICE**

*Report presented by the Secretary General
of the Council of Europe*

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INTRODUCTION

1. The terrorist attacks in the United States on 11 September shook the international community and questioned previously established international relations. In response, the international community has mobilised all its forces and expertise to counter, as effectively as possible, terrorism all over the globe.

2. At your 24th Conference in Moscow, 4-5 October 2001, you adopted Resolution No. 1 *on combating international terrorism*, condemning the attacks and reaffirming your determination to combat all forms of terrorism. This Resolution constituted a clear expression of your will to play your part in states' efforts to reinforce the fight against terrorism and to increase the security of citizens, in a spirit of solidarity and on the basis of the common values to which the Council of Europe is firmly committed: the rule of law, human rights and pluralist democracy. Moreover, it highlighted the need for a multidisciplinary approach to the problem of terrorism, to include all the relevant legal aspects while involving the public.

3. Later on, at your 25th Conference in Sofia, 9-10 October 2003, you took stock of the new developments at national and international level in the context of the fight against terrorism and you supported the counter-terrorism activities undertaken by the Council of Europe. Convinced of the need to continue to strengthen international co-operation, you launched an appeal to member and observer states of the Council of Europe to take additional steps and you took a series of decisions to enhance the efforts of the international community and, more specifically, of the Council of Europe in this area.

4. Concerning the involvement of Council of Europe member states in the overall counter-terrorism efforts of the international community, in your Resolution (see Appendix I) you :

- welcomed *the large number of member states of the Council of Europe which had become Parties to international treaties on terrorism, in particular those concluded in the framework of the United Nations, as well as to the Rome Statute of the International Criminal Court; and you invited those which had not yet done so to become Parties as soon as possible to these instruments and also to other international treaties concerning co-operation which are most relevant in the field of the fight against terrorism* (Resolution No. 1, para. 17);
- and also called upon *all member states to contribute to discussions in the United Nations with the intention to resolve the outstanding issues in negotiations on the draft UN Comprehensive Convention against Terrorism and on the draft UN Convention for the suppression of acts of nuclear terrorism* (para. 21);

5. Concerning more specifically the role of the Council of Europe in the fight against terrorism, in your Resolution you welcomed *the results achieved by the Multidisciplinary Group against Terrorism (GMT), in particular the drafting of the Protocol Amending the European Convention on the Suppression of Terrorism of 15 May 2003* (para. 15); consequently, you called upon *the member states of the Council of Europe to become Parties to this Protocol to ensure its entry into force as soon as possible; and you invited observer states to become Parties to the European Convention on the Suppression of Terrorism, as revised by its amending Protocol* (para. 16).

6. You also welcomed *the setting up by the Committee of Ministers of the Committee of Experts on Terrorism (CODEXTER) responsible for coordinating the work of the Council of Europe in the fight against terrorism* (para. 19) and you invited the Committee of Ministers to pursue its action and, in particular, to take the following measures:

- *on the one hand, to pursue without delay the work with a view to adopting relevant international instruments on the protection of witnesses and pentiti and on the use of special investigation techniques relating to acts of terrorism and, on the other hand, to review the European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983 or, where necessary, adopt new rules concerning the improvement of the protection, support and, compensation of victims of terrorist acts and their families* (para. 20);
- *to launch work with a view to examining, in the light of the opinion of the CODEXTER, the added value of a comprehensive European Convention against terrorism, open to observer states, or some elements of such a convention, which could be elaborated within the Council of Europe and to contributing significantly to the UN efforts in this field* (para. 22);
- *to entrust the CEPEJ [Commission for the Efficiency of Justice] with the task of ensuring the preparation of an assessment report on the effectiveness of national judicial systems in their responses to terrorism* (para. 23);
- *in the framework of the co-operation programmes with member states of the Council of Europe, to provide support for states in upgrading their counter-terrorism legislative and institutional capacities and to pursue effective co-ordination with other international bodies* (para. 24);
- *to consider the feasibility of setting up a European register of national and international standards, starting as a matter of priority with standards in the field of the fight against terrorism* (para. 25).

7. Finally, you asked me to report, at of your next Conference, on the steps taken to give effect to this Resolution (para. 26).

8. In pursuance of the above-mentioned request, I am pleased to report to you the developments concerning these and other related issues that have occurred since your last Conference in October 2003.

Contribution of member and observer states to the efforts of the international community

9. First of all, I am pleased to report that since your last conference significant developments have taken place regarding your call for member and observer states of the Council of Europe *to become Parties as soon as possible to international treaties on terrorism, in particular those concluded in the framework of the United Nations, as well as to other international treaties concerning co-operation which are most relevant in the field of the fight against terrorism, namely:*

- 2 member states have become Parties to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including

Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973 (deposited with the Secretary-General of the UN);¹

- 2 member states have become Parties to the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979 (deposited with the Secretary-General of the UN);²
- 8 member states have acceded to the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997 (deposited with the Secretary-General of the UN);³
- 6 member states have ratified the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999 (deposited with the Secretary-General of the UN);⁴
- 1 member state has become Party to the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963 (deposited with the Secretary-General of the International Civil Aviation Organization);⁵
- 2 member states have acceded to the Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980 (deposited with the Director-General of the International Atomic Energy Agency);⁶
- 2 member states have become Parties to the Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988 (deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America and with the Secretary-General of the International Civil Aviation Organization);⁷
- 3 member states have become Parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988 (deposited with the Secretary-General of the International Maritime Organization);⁸
- 3 member states have become Parties to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988 (deposited with the Secretary-General of the International Maritime Organization);⁹ and

¹ Source: http://untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty7.asp consulted on 03/03/2005.

² Source: http://untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty5.asp consulted on 03/03/2005.

³ Source: http://untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty9.asp consulted on 03/03/2005.

⁴ Source: http://untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty11.asp consulted on 03/03/2005.

⁵ Source: <http://www.icao.int/icao/en/leb/Tokyo.htm> consulted on 03/03/2005.

⁶ Source: <http://www.icao.int/en/leb/Via.htm> consulted on 03/03/2005.

⁷ Source: <http://www.icao.int/icao/en/leb/Via.htm> consulted on 03/03/2005.

⁸ Source: <http://www.imo.amsa.gov.au/public/parties/sua88.html> consulted on 14/03/2005.

⁹ Source: <http://imo.amsa.gov.au/public/parties/sua88pro.html> consulted on 14/03/2005.

- 3 member states have become Parties to the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991 (deposited with the Secretary-General of the International Civil Aviation Organization).¹⁰

10. There have been no new accessions by member or observer states to the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970 (deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America) or the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 (deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America) because they were all Parties to them already.¹¹

11. As for your call to member and observer states *to become Parties as soon as possible to the Rome Statute of the International Criminal Court*, the Council of Europe had earlier deployed significant efforts to ensure the early entry into force of the Rome Statute, including the organisation of three multilateral consultations, the last of which was held on 17 September 2003. These efforts have proved efficient and since your last conference another of our member states has become a Party to the Rome Statute.¹² A total of 38 of our 46 member states are already Parties to the Rome Statute,¹³ together with 1 observer state, while a further 6 member states, together with 3 observer states, have signed it.¹⁴ This 26th Conference of European Ministers of Justice provides us with a privileged forum to stress once more the commitment of our Organisation to the ICC. Therefore, the Council of Europe will organise a fourth multilateral consultation in the course of 2006.

12. Finally, I should like to recall your call to member and observer states *to contribute to discussions in the United Nations with the intention of resolving the outstanding issues in negotiations on the draft UN Comprehensive Convention against Terrorism and on the draft UN Convention for the suppression of acts of nuclear terrorism* (para. 21).

13. In this connection, the Council of Europe has consistently and repeatedly called upon its member states to contribute to the successful completion of the above-mentioned negotiations which have been closely followed by us. Despite the efforts deployed by our member states it has not been possible to conclude the negotiations due to other factors. Nonetheless, by elaborating a number of new international instruments, in addition making a meaningful contribution by filling in gaps in international law and action, the Council of Europe has also wished to give a strong message about the usefulness of pursuing multilateral normative efforts at international level.

¹⁰ Source: <http://www.icao.int/icao/en/leb/MEX.htm> consulted on 03/03/2005.

¹¹ Source, respectively: <http://www.icao.int/icao/en/leb/Hague.htm> and <http://www.icao.int/icao/en/leb/Mtl71.htm> both consulted on 03/03/2005.

¹² Source: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.asp> consulted on 03/03/2005.

¹³ Idem.

¹⁴ Idem.

Contribution of the Council of Europe to international action against terrorism

14. Let me now turn more specifically to the contribution of the Council of Europe to international action against terrorism. This contribution is based on three cornerstones: strengthening legal action against terrorism, safeguarding fundamental values and addressing the causes of terrorism.

15. As regards the second of these cornerstones, it should be mentioned that the Committee of Ministers adopted on 3 March 2005 Guidelines on the protection of victims of terrorist acts, which are an extension of the Guidelines on human rights and the fight against terrorism, adopted on 11 July 2002. These Guidelines aim at identifying the measures that should be taken to help victims of terrorism and protect their fundamental rights, while excluding any form of arbitrary, discriminatory or racist treatment.

16. These measures include:

- emergency assistance (medical, psychological, social and material) given free of charge;
- longer term assistance for any person who has suffered physical or psychiatric harm as a result of a terrorist act, including, in the appropriate circumstances, for members of their close family;
- effective access of such victims to the law and to justice;
- the payment of fair and appropriate compensation for any damage they have suffered;
- the protection of their private and family life, their dignity and their security;
- the setting up of appropriate information contact points for victims, concerning in particular their rights, the existence of victim support bodies, and the possibility of obtaining assistance, practical and legal advice, as well as redress or compensation.

17. In this context, the Committee of Ministers also recognised the important role played by victim support organisations and invited member states to encourage specialist training for those responsible for helping victims of terrorist acts, and to provide the necessary resources.

18. The Committee of Ministers has also recently adopted (March 2005) a Declaration on Freedom of expression and information in the media in the context of the fight against terrorism, in which he reaffirmed states duty to facilitate access to information and to respect editorial independence even in times of crisis.

19. Lastly, in terms of this vital second cornerstone, I wish to recall the important provisions of the European Commission against Racism and Intolerance (ECRI) General policy Recommendation No. 8 on combating racism while fighting terrorism, adopted in March 2004.

20. Let me now turn to the measures taken with a view to ***strengthening legal action against terrorism***, which is the first cornerstone of the Council of Europe's action against terrorism and, indeed, the core of my report .

21. As I reported to you at your previous conference, since the end of 2001, the most significant developments in the legal area have all been connected with the work of the Multidisciplinary Group on International Action against Terrorism (GMT), created by the Committee of Ministers on 8 November 2001 "to take steps rapidly to increase the effectiveness of the existing international instruments within the Council of Europe on the fight against terrorism".

22. The GMT was assigned two main tasks:

- to review the operation of, and to examine the possibility of updating, in particular, the European Convention on the Suppression of Terrorism; and
- to report to the Committee of Ministers on the action which the Council of Europe could usefully carry out in the field of the fight against terrorism, taking account of the work carried out in other international bodies.

23. Its successor, the CODEXTER, was set up in 2003 and given the responsibility of coordinating and following-up the counter-terrorist activities of the Council of Europe in the legal field.

24. Allow me now to report to you on the situation regarding, firstly, the Amending Protocol to the European Convention on the Suppression of Terrorism and, secondly, on the priority counter-terrorism activities of the Council of Europe.

The revised European Convention on the Suppression of Terrorism

25. The Amending Protocol (ETS No. 190) to the 1977 European Convention on the Suppression of Terrorism (ETS No. 90) was opened for signature on 15 May 2003. As of 3 March 2005, it has been ratified by 13 states and signed by a further 30. The state of signatures and ratifications appears in Appendix II to this report. The Protocol will enter into force when it has been ratified by all the States Parties to the European Convention on the Suppression of Terrorism, which has been ratified by 44 member states and signed by 1 (see Appendix III).

26. As you know, the 1977 Convention sets out to "depoliticise" certain crimes and offences for the purposes of extradition. The Protocol introduces a series of improvements to the Convention. First of all, the list of offences which may never be regarded as political or politically motivated has been substantially extended and now includes all the offences covered by the United Nations' anti-terrorist conventions. A simplified amendment procedure has also been introduced which will allow new offences to be added to the list in the future. The Convention has furthermore been opened to observer states, and the Committee of Ministers may decide to open it to other non-member states.

27. The Protocol covers the possibility of refusing to extradite offenders to countries where they risk the death penalty, torture or life imprisonment without parole. Possibilities to refuse extradition on the basis of reservations to the Convention have been significantly reduced, since a reserving state will only be able to avail itself of its reservation on a case-by-case basis, through a duly motivated decision. Moreover, such refusal will be subject to a specific follow-up procedure, which will also apply to the follow-up to any obligation under the Convention as amended. This follow-up is ensured

by a newly-established body, the COSTER, which is responsible for ensuring the effective use and operation of the Convention, examining reservations, exchanging information on developments pertaining to the fight against terrorism and elaborating proposals for additional measures to improve international co-operation in this area.

28. The Committee of Ministers considers the state of signatures and ratification of this Protocol at regular intervals and on this basis invites states which have not yet done so to sign and ratify this instrument as soon as possible. Likewise, the CODEXTER regularly conducts *tours de table* on national developments concerning this Protocol, in order to facilitate its ratification by all the States Parties to the European Convention on the Suppression of Terrorism.

29. I would like to take this opportunity to call upon those member states which are Parties to the European Convention on the Suppression of Terrorism to become Parties to its Amending Protocol as soon as possible to ensure its early entry into force.

Priority activities of the Council of Europe against terrorism

30. The Council of Europe's priority activities are those identified by the GMT, and subsequently endorsed by the Committee of Ministers in November 2002, as well as those identified at your 25th Conference in Sofia (9-10 October 2003) and endorsed by the Committee of Ministers on 4 December 2003, namely:

- a. research on the concepts of “*apologie du terrorisme*” and “incitement to terrorism”;
- b. special investigation techniques;
- c. protection of witnesses and pentiti/collaborators of justice;
- d. action to cut terrorists off from funding sources;
- e. questions of identity documents which arise in connection with terrorism;
- f. international co-operation on law enforcement;
- g. protection, support and compensation of victims of terrorist acts;
- h. assessment of the effectiveness of national judicial systems in their responses to terrorism;
- i. feasibility of setting up a European register of national and international standards, starting with standards in the field of the fight against terrorism;
- j. possible added value of a comprehensive Council of Europe convention on terrorism, which would contribute significantly to UN efforts in this field;
- k. support for the upgrading of member states' counter-terrorism legislative and institutional capacities.

a) and j) Convention on the Prevention of Terrorism

31. At your 25th Conference, you invited the CODEXTER to provide the Committee of Ministers with an opinion on the added value of a possible Council of Europe comprehensive convention on terrorism, or of some elements of such a convention, which would contribute significantly to the UN efforts in this field.
32. In pursuance of this request, at its 1st meeting (Strasbourg, 27-30 October 2003), the CODEXTER commissioned the preparation of an independent report on possible lacunae in international instruments against terrorism and on the “possible added value” of a European comprehensive convention in relation to existing universal and European instruments of relevance to the fight against terrorism.
33. The CODEXTER considered this report at its 2nd meeting (Strasbourg, 29 March-1 April 2004). The general conclusion of the report was that a Council of Europe comprehensive convention on terrorism would provide considerable added value with respect to existing European and universal counter-terrorism instruments.
34. The CODEXTER could not reach a consensus on the question of whether or not the Council of Europe should elaborate a comprehensive convention on terrorism. However, it agreed that a limited-scope instrument or instruments, dealing with the prevention of terrorism and covering existing lacunae in international law or action, would bring added value, and agreed to propose to the Committee of Ministers to instruct the CODEXTER to undertake work in this direction.
35. At its 114th Session (12-13 May 2004), the Committee of Ministers endorsed the CODEXTER’s position and on 11 June 2004, the CODEXTER was instructed, *inter alia*, to “elaborate proposals for one or more instruments (which could be legally binding or not) with specific scope dealing with existing lacunae in international law or action on the fight against terrorism, such as those identified by the CODEXTER in its 2nd meeting report.”
36. The CODEXTER held a further six meetings, from July 2004 to February 2005 (its 3rd to 8th meetings) and prepared a draft European Convention on the prevention of terrorism.
37. I would like to pay tribute to the excellent work of this Committee which has quickly become a model in our intergovernmental structure both in terms of expertise and efficiency.
38. From the outset, the CODEXTER agreed on the need to strengthen legal action against terrorism while ensuring respect for human rights and fundamental values, and on the necessity of including provisions on appropriate safeguards and conditions in the draft Convention.
39. Two texts of the Council of Europe were particularly significant for this work, namely: Parliamentary Assembly Recommendation 1550 (2002) on combating terrorism and respect for human rights, and the above-mentioned Guidelines on human rights and the fight against terrorism.
40. The CODEXTER adopted the draft on first reading at its 6th meeting in December 2004 and submitted it to the Committee of Ministers which in turn authorised consultation of the Parliamentary Assembly and the Commissioner for Human Rights of the Council of Europe.

41. At its 7th meeting, early in February 2005, the CODEXTER revised the draft in the light of the above-mentioned opinions and adopted the text on second reading, notwithstanding some issues which required further consideration. At this meeting, the CODEXTER also decided to make the drafts public and to invite interested organisations to submit comments.

42. At its 8th meeting, at the end of February 2005, the CODEXTER finalised the draft Convention and its Explanatory Report.

43. The Committee of Ministers will soon adopt the Convention and open it for signature by the member states of the Council of Europe and the non-member states that had participated in its negotiation on the occasion of the Third Summit of Heads of State and Government of the Council of Europe. The Convention is contained in document CODEXTER (2004) 27 final.

44. The Convention concerns the delicate subject of the prevention of terrorism, and aims at covering some of the existing lacunae in international law and action against terrorism, as identified by the studies of international independent experts and by the CODEXTER.

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

46. The Convention seeks to achieve this objective, on the one hand, by establishing as criminal offences certain acts that may lead to the commission of acts of terrorism, including public provocation, recruitment and training, and, on the other hand, by reinforcing co-operation on prevention both internally, in the context of the definition of national prevention policies, and internationally by supplementing and, where necessary, modifying existing extradition and mutual assistance arrangements concluded between the Parties and providing for additional means, such as spontaneous information, together with obligations relating to law enforcement, such as the duty to investigate, obligations relating to sanctions and measures, liability of legal entities in addition to that of individuals, or the obligation to prosecute where extradition is refused.

47. It is now important that we ensure that the Convention enters into force as soon as possible and the forthcoming Summit of Heads of State and Government of the Council of Europe will provide a unique opportunity to start that process.

b) Special Investigation Techniques (SIT)

48. Owing to its complex and secret nature, the investigation of terrorist activities raises serious difficulties. These difficulties are accentuated by the frequent links between terrorism and other forms of crime (e.g. money laundering, drug trafficking, the sale of illegal arms and organised crime) and by the sometimes blurred frontier between legal and illegal activities. This has led to the awareness that, in the framework of criminal investigations, these matters can only be effectively and rapidly addressed by using special investigation techniques, including undercover agents, electronic surveillance, multidisciplinary approaches and inter-service co-operation. However, in doing so, it is

essential to ensure that the human rights guarantees enshrined in the relevant international legal instruments are fully respected.

49. In February 2003, the Committee of Ministers had set up a Committee of Experts on Special Investigations Techniques in relation to Acts of Terrorism (PC-TI) to study the use of SIT respective of European criminal justice and human rights standards, with a view to facilitating the prosecution of terrorist offences and increasing the effectiveness of law enforcement, and to make proposals as to the feasibility of preparing an appropriate instrument in this field.

50. The Committee met three times during 2003 and concluded that it would be feasible to draw up a recommendation on the use of SIT, so as to invite member states to develop common principles governing the use of SIT reconciling the effectiveness of the fight against serious crimes, such as terrorism, with respect for human rights and the fundamental principles of penal justice. The recommendation should furthermore invite member states to identify best practice and improve international co-operation in relation to the use of these techniques.

51. The PC-TI received revised terms of reference in May 2004 and after three meetings finalised the elaboration of the draft Committee of Ministers recommendation. The draft recommendation was approved by the European Committee on Crime Problems (CDPC) in March 2005. The Committee of Ministers will soon adopt it.

52. The recommendation was drafted on the premise that SIT constitute crucial tools to investigate acts of terrorism but, since they often interfere with rights guaranteed by the European Convention on Human Rights, they must be properly regulated and used.

53. The aim of the recommendation is therefore to promote the effective use of SIT by judicial and prosecuting authorities in the framework of their criminal investigations in relation to serious crimes, including acts of terrorism, whilst ensuring strict respect for the rights and freedoms of the individual. To this end, the recommendation recalls or provides for some common principles that should be respected when the competent authorities use SIT and suggests measures to be taken with a view to improving international co-operation between member states in this field.

54. The draft recommendation is appended to this report (see Appendix IV).

55. A survey of national practice together with an analytical report will be published shortly.¹⁵

c) Protection of witnesses and collaborators of justice

56. The protection of witnesses and collaborators of justice can help increase the effectiveness of the fight against terrorism. This fight is often based on the testimony of people who are closely connected to terrorist groups and who are more vulnerable than others to the use of intimidation against them or against people close to them. This may result in the criminal justice system failing to bring offenders to trial and obtain judgments because witnesses are effectively discouraged from testifying freely and truthfully. It is therefore of the utmost importance that states protect witnesses against

¹⁵ Terrorism: Special Investigation Techniques, Council of Europe Publishing 2005, ISBN 92-871-5655-7.

such risk by providing them with specific measures of protection that effectively ensure their safety.

57. The Council of Europe has extensive experience in this area based on existing European conventions, the focus being on combating crime in areas such as corruption, organised crime and cybercrime. Committee of Ministers Recommendation R(97)13 concerning the intimidation of witnesses and the rights of the defence contains indications which are also essential in this field.

58. Already in February 2003, the Committee of Ministers had set up a Committee of Experts in this field (PC-PW) to study the means for strengthening the protection of witnesses and collaborators of justice in relation to acts of terrorism, including those at international level, and to make proposals as to the feasibility of preparing an appropriate instrument, bearing in mind the links with other related criminal activities.

59. The Committee met three times in 2003 and concluded that it would be technically feasible and advisable to establish an international legal framework for international co-operation in matters related to the protection of witnesses and collaborators of justice, which should be based on a combination of binding and non-binding instruments. The core of this framework should be a conventional instrument, which could take the form of a new independent convention or of an additional instrument to existing conventions. In particular, it should aim at facilitating international co-operation and at setting common criteria to preserve an acceptable balance between the protection measures and the human rights and fundamental freedoms of all the parties involved (witnesses/collaborators of justice, defendants, victims). The conventional instrument would be completed by elements of “soft law”.

60. In May 2004, the PC-PW received revised terms of reference to prepare a draft legal framework for international co-operation in matters related to the protection of witnesses and collaborators of justice, including in relation to acts of terrorism, on the basis of the conclusions of its final report.

61. The Committee was called upon, in particular, to identify issues that should be addressed by means of international non-binding legal instruments and, where appropriate, elaborate draft texts, and identify issues that should be addressed by means of international binding legal instruments and, following the approval of an interim report by the CDPC recognising the need for such instruments, elaborate draft texts.

62. After three plenary meetings, in February 2005, PC-PW finalised the elaboration of a draft recommendation which was approved by the CDPC in March 2005. The Committee of Ministers will soon adopt it.

63. The purpose of the recommendation is to enhance the compatibility of national criminal justice systems in relation to protection of witnesses and collaborators of justice. The PC-PW used Recommendation No. R(97)13 of the Committee of Ministers concerning the intimidation of witnesses and the rights of the defence as the point of departure for its work and aimed at revising and updating the text, with a view to extending its scope on the basis of the additional experience and information acquired since its adoption. Moreover, the objective of the recommendation is to provide guidance on those more specific aspects which were not sufficiently developed in the 1997 Recommendation because of a lack of experience or because of the different focus of that instrument.

64. The recommendation reaffirms the standpoint that the evidence provided by witnesses in relation to certain types of crime, where the prosecution of illegal acts is particularly difficult, is crucial for the conviction of offenders. However, criminal groups are capable, by intimidating, harming or bribing witnesses, of obstructing investigations and justice. Therefore, it recalls that the duty to give testimony implies a corresponding duty on the state to provide measures which will ensure the safety of witnesses and collaborators of justice. The draft recommendation also refers to the evolving case-law of the European Court of Human Rights, because it sets precise limits to the restriction of the defence's rights. In the context of entitlement to a fair and public trial, Article 6 secures for everyone the right to have a charge against him/her brought before a court. However, this right is not absolute and is, therefore, subject to implied limitations.

65. The draft recommendation is appended to this report (see Appendix V).

66. The expert committee was also instructed to identify issues that should be addressed by means of international binding legal instruments. In this respect, it concluded that it would be technically possible to envisage a new international binding legal instrument focused on international co-operation and human rights guarantees related to the protection of witnesses and collaborators of justice to deal with the lacunae existing in this field." However, the CDPC did not conclude in favour of the elaboration of such an instrument at this point and has decided to pursue consideration of this matter.

d) Action to cut terrorists off from funding sources

67. The efforts of the Council of Europe in this area are twofold. They concern, on the one hand, the evaluation of states' capacities, through the Select Committee of experts on the evaluation of anti-money laundering measures (MONEYVAL), and, on the other hand, the revision of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141).

- MONEYVAL

68. This Council of Europe Committee has more than five years' experience in the evaluation of anti-money laundering measures. It currently comprises 25 Council of Europe member states which are not members of the Financial Action task Force on Money Laundering (FATF).

69. In April 2002, MONEYVAL received revised terms of reference instructing it to include in its self- and mutual evaluation process the Special FATF Recommendations on terrorist financing.

70. A third round of mutual evaluations of MONEYVAL's member states began in January 2005 on the basis of a new Anti-Money Laundering and Combating Terrorist Financing (AML/CFT) Methodology which is the result of collaboration with the FATF and the International Monetary Fund/World Bank.

71. We have reached an agreement with the IMF/World Bank according to which, in principle, MONEYVAL evaluations will be accepted as the AML/CFT component in the IMF/World Bank's own full Financial Sector Assessments (FSAPs) in respect of MONEYVAL member states.

- Revision of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141)

72. I recall that in September 2003, the Committee of Ministers set up a new Committee of Experts on the revision of this Convention.

73. In February 2004, this Committee submitted a feasibility study and in September finalised a new draft Convention against Money Laundering and the Financing of Terrorism.

74. The draft Convention which is contained in document CDPC (2005) 9 was approved by the CDPC on 10 March 2005. The Committee of Ministers will soon adopt it.

75. The new Convention addresses such issues as the setting up of financial intelligence units, asset-sharing, recovery of assets, measures to counter laundering techniques which target the non-bank sector and professional intermediaries who are used to invest criminal proceeds in the legitimate economy, and improved international co-operation. It is likely that this new Convention will provide for the monitoring of its implementation by States Parties.

e) Questions of identity documents which arise in connection with terrorism

76. Although the vast majority of persons applying for and using identity and travel documents do so for legal purposes, they are also used by terrorists, for whom they constitute a vital tool in carrying out their terrorist activities. For this reason, the GMT identified the need to strengthen the reliability of the identification of individuals as one of the priorities for further counter-terrorism action. Under the authority of the European Committee on Legal Co-operation (CDCJ) and in close co-operation with the GMT and the CODEXTER, two successive Groups of Specialists identified provisions which could usefully be included in an international instrument to contribute to and strengthen the Council of Europe and its member states' action against terrorism.

77. In November 2004 the Committee of Ministers set up a Group of Specialists under the authority of the CODEXTER to prepare a draft recommendation to member states on this matter.

78. The Group finalised the draft in January 2005 and it was approved by the CODEXTER in March 2005. The Committee of Ministers adopted it on 30 March 2005. The text of the recommendation is appended to this report (see Appendix VI).

79. The aim of the recommendation is to ensure the accurate, rapid and reliable identification of individuals, in particular as regards the issuing of identity travel documents. To this end, it calls on member states to take measures to strengthen the security of identity and travel documents, for instance by building appropriate physical securities into documents, ensuring the security and accessibility of the competent authorities to records of issued identity and travel documents, and complying with the International Civil Aviation Organisation (ICAO) standards on machine readable travel documents. It also indicates the appropriate course of action to be taken in the event of lost or stolen identity and travel documents.

80. The recommendation also contains provisions dealing with proof of identity as well as the registration of births and issuance of birth certificates, which are the key documents necessary to obtain identity and travel documents.

81. Finally, it contains some provisions dealing with international co-operation that call for the exchange of information with other member states and with international law enforcement bodies such as EUROPOL and INTERPOL, in particular regarding issued and blank lost and stolen identity and travel documents. It also calls on states to adopt or develop effective systems of updating relevant records and registers in order to be able to integrate events occurring in other countries – such as marriage, change of nationality or name - affecting their nationals or residents.

f) International co-operation on law enforcement

82. It is clear that any effective fight against terrorism requires efficient international co-operation at all levels and, in particular, between the police, the judiciary and the prosecution services

83. As regards, more particularly, international judicial co-operation in the fight against terrorism, it is important to promote and strengthen co-operation between prosecutors and judges in different countries. This should be done by making use of traditional mutual legal assistance systems and also by creating new ones. International police co-operation is also crucial in this context, as there are often significant obstacles to the collection and distribution of reliable information on terrorism and terrorist groups or individuals at the international level. In addition, this information must be safeguarded. Efforts should be made to remove these obstacles, to promote regular sharing of information and to promote co-operation on joint activities as a key to preventing terrorist attacks.

84. Following a recommendation by the GMT and the CODEXTER, the Committee of Experts on the Operation of European Conventions in the Penal Field (PC-OC) was asked to examine international co-operation mechanisms with a view to proposing, where necessary, measures for improvement, and to developing measures (i) to intensify and accelerate exchanges of information, in particular concerning the actions and movements of terrorists and of terrorist groups, and (ii) to improve mutual assistance in criminal matters in view also of the need to obtain evidence.

85. In October 2004, this Committee concluded that the existing conventions on extradition, on transfer of sentenced persons and on mutual legal assistance, and their protocols, provide states with efficient tools to facilitate judicial co-operation in the fight against terrorism, and that states should continue to be encouraged to ratify and implement these instruments.

86. This Committee will continue to examine ways of facilitating the implementation of the conventions and to strengthen the basis for an efficient transnational system of judicial co-operation in Europe. It will do so in particular by identifying ways of reducing delays in answering co-operation requests, encouraging states to review and, where possible, lift reservations to the conventions, and encouraging states to make use of the mechanisms set forth in the Second Additional Protocol to the European Convention on Mutual Assistance in criminal matters.

87. Since your 25th conference in Sofia, there have been significant developments in the direction of enhancing the Council of Europe conventional network. Apart from the Protocol of Amendment to the European Convention on the Suppression of Terrorism, which has already been discussed, progress has been registered in the use of other existing Council of Europe instruments with a bearing on the fight against terrorism and organised crime.

88. First of all, two new important instruments have entered into force, namely the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182), which had been opened for signature on 8 November 2001, entered into force on 1 February 2004, and the Convention on Cybercrime (ETS No. 185), opened for signature on 23 November 2001, entered into force on 1 July 2004.

89. New signatures and ratifications of other existing instruments have also been registered, namely:

- the European Convention on the Suppression of Terrorism (European Treaty Series (ETS) No. 90) has been ratified by a further 4 states and its Amending Protocol (see below) (ETS No. 190) has been ratified by 13 member states and signed by 9 states;
- the European Convention on Extradition (ETS No. 24) has been signed by 1 more state;
- the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) has been signed by 2 more states, and its first additional protocol (ETS No. 99) has been ratified by 2 more states;
- the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116) has been signed by 4 more states and ratified by 2 more states;
- the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) has been signed by 2 states and ratified by 6 states. It has now been ratified by all member states and one observer state,
- the Additional Protocol (ETS No. 189) to the Convention on Cybercrime has been signed by 9 states and ratified by 2 states.

90. The current state of signatures and ratifications of the most important Council of Europe Conventions of relevance to the fight against terrorism appears below.

**State of signatures and ratifications of Council of Europe treaties
relevant to the fight against terrorism
(as of 3 March 2005)**

Convention	Signatures	Ratifications
European Convention on the Suppression of Terrorism (ETS No. 090) 27 January 1977	1	44
Protocol amending the European Convention on the Suppression of Terrorism (ETS No. 190) 15 May 2003	30	13
European Convention on Extradition (ETS No. 024) 13 December 1957	2	45
European Convention on Mutual Assistance in Criminal Matters (ETS No. 030) 20 April 1959	3	43
Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 099) 17 March 1978	2	39
Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182) 8 November 2001	19	10
European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116) 24 November 1983	8	17
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) 8 November 1990	0	47
Convention on Cybercrime (ETS No. 185) 23 November 2001	32	9
Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189) 28 January 2003	23	2

g) protection, support and compensation of victims of terrorist acts

91. At your 25th Conference, you invited the Committee of Ministers to consider the possible revision of the European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983 (ETS No. 116) or the possible adoption of rules concerning the improvement of the protection, support and compensation of victims of terrorist acts and their families, in the light of the Madrid Declaration adopted at the 1st International Congress of Victims of Terrorism (Madrid, 26-27 January 2004) which calls, *inter alia*, on the Council of Europe to address the concerns of victims of terrorism.

92. At its 1st meeting, the CODEXTER underlined the importance of the issue of compensating victims of terrorism and expressed its concern at the low number of ratifications of Convention ETS No. 116. It concluded, however, that, on the one hand, it would not be necessary at this stage to proceed to a revision of Convention ETS No. 116, and, on the other hand that it would be useful to hold an exchange of information and best practice on compensation and insurance schemes introduced by states, particularly in relation to victims of terrorist acts. Furthermore, it agreed to pursue the analysis of the specific aspects related to the protection of victims of terrorism in the framework of its reflection on the possible elaboration of international instruments. As a result, a specific provision on protection and compensation of victims of terrorism was included in the draft European Convention on the prevention of terrorism (see a).

93. The CODEXTER holds regular exchanges of information and best practice concerning national systems for the protection and compensation of victims of terrorism.

94. Further to that, in December 2004 the Committee of Ministers set up a Group of Specialists which, under the authority of the CDPC, is working on the revision of Council of Europe standards in this field, with a particular focus on victims of terrorism.

h) assessment of the effectiveness of national judicial systems in their responses to terrorism

95. As a result of the call you made at your last Conference in Sofia, the European Commission for the Efficiency of Justice (CEPEJ) was entrusted with the preparation of an assessment report on the effectiveness of national judicial systems in their responses to terrorism.

96. The CEPEJ considered and took note of this report in June 2004 and agreed to follow carefully developments with respect to the implementation of the activities of the Council of Europe against terrorism, within the scope of its competence.

97. This report was then submitted to the CODEXTER which decided to bear it in mind in its work and in particular when making a proposal to the Committee of Ministers for additional activities against terrorism.

i) Feasibility of setting up a European register of national and international standards, starting with standards in the field of the fight against terrorism

98. At your 25th Conference, you invited the Committee of Ministers to examine the possible setting up of a European register of national and international standards, starting as a matter of priority with standards in the field of the fight against terrorism. Following this invitation, the CODEXTER agreed on the usefulness of drawing up short country profiles addressing the most relevant questions related to member states' legislative and institutional capacity to respond to acts of terrorism – the Country Profiles.

99. In April 2004 the CODEXTER conducted a Pilot Project including Germany and Romania. In July 2004, the CODEXTER welcomed the results of the Pilot Project and decided to pursue the activity on this basis. So far eight country profiles have been drawn up and published: Belgium, Bulgaria, Germany, Latvia, Poland, Romania, Spain and the United Kingdom.

100. The profiles of Austria, Croatia, Hungary, Lithuania, Luxembourg, Slovenia, Turkey and the European Union are currently under preparation and are expected to be published in the autumn.

101. In the implementation of this activity, the Council of Europe co-operates with the OSCE-ODIHR by linking their respective online tools (www.coe.int/gmt and "legislationline"). These profiles have also met with significant interest on the part of the international community, including the UN Security Council Counter-Terrorism Committee (CTC).

k) Support for the upgrading of member states' counter-terrorism legislative and institutional capacities

102. Following the invitation you addressed to the Council of Europe at your last Conference, our Organisation has strengthened its working relationship with other international organisations active in this field (EU, OSCE, UN), for instance through its participation in the High-Level Tripartite Meetings between the Council of Europe, the OSCE and the UN, which also included the Council of the European Union, the European Commission, the International Organisation for Migration and the International Committee of the Red Cross.

103. I should also like to recall that, as a regional organisation, the Council of Europe is engaged in facilitating the implementation of UN Security Council Resolution 1373(2001), by providing a forum for the discussion and adoption of regional standards and best practice and by providing assistance to its member states in improving their counter-terrorism capacity. The Council of Europe participates at the special meetings of the CTC with the representatives of international, regional and sub-regional organisations.

104. The Council of Europe's Co-operation programmes to strengthen the rule of law have been extended to take into account the need to upgrade the legislative and institutional capacities of member states. These programmes are designed to help beneficiary countries to proceed with the reforms necessary to comply with European and international counter-terrorism standards, including the relevant conventions of the Council of Europe and the UN. The programmes chiefly involve working with governmental authorities to prepare and introduce legal and operational frameworks adapted to the country's specific needs and features, and to ensure that reforms are actually implemented with respect for fundamental European standards and principles. The activities are defined in close co-operation with the countries concerned and with other international organisations. Co-operation activities are essentially based on multilateral, regional or bilateral information and training seminars, expert appraisals, needs-assessments and study visits.

105. Within the framework of these programmes, several expert appraisals, workshops and seminars have been organised by the Council of Europe, some in co-operation with other international organisations, in particular UNODC.

Conclusions

106. The Council of Europe has progressed rapidly in the implementation of the priority activities of the organisation against terrorism as a contribution to the efforts of the international community.

107. A great deal has been accomplished since your 24th Conference in Moscow in 2001, as shown by the adoption of the Protocol amending the 1977 European Convention on the Suppression of Terrorism and the Guidelines on Human Rights and the fight against terrorism, by evaluating the measures taken by states to combat the financing of terrorism thereby contributing to the implementation of the FATF recommendations in this area, and by implementing the priority activities defined by the Committee of Ministers.

108. Even more has been accomplished since your last (25th) Conference in Sofia in 2003, as shown by the elaboration of two new conventions against terrorism covering

gaps in international law and action, thus providing a concrete contribution, and by the elaboration of three recommendations of the Committee of Ministers which will further contribute to enhancing the capacity of states to act effectively against terrorism.

109. The requests you made in Resolution No. 1 at your last Conference have indeed been fulfilled, as shown in the first part of this report.

110. Despite these achievements, it is as important as ever that we pursue the efforts in the same direction by focusing on early entry into force of the new conventions and effective implementation of all relevant international instruments on the one hand, and reinforcing our co-operation activities with individual states on the other.

111. It is therefore crucial that strong political impetus and support continue to be provided regarding these areas which will be the key challenge of the counter-terrorism efforts of our Organisation for the coming years.

Appendix I

25th Conference of European Ministers of Justice (Sofia, 9-10 October 2003)

Resolution No. 1 on Combating Terrorism

1. THE MINISTERS participating in the 25th Conference of European Ministers of Justice (Sofia, October 2003);
2. Deploring the loss of life and the injuries suffered by thousands of innocent people as a result of terrorism;
3. Condemning all terrorist attacks and reaffirming their determination to combat all forms of terrorism while fully respecting human rights;
4. Aware that concerted international action is vital to success in the fight against the scourge of terrorism, including action aiming, where appropriate, at preventing or remedying situations which may foster terrorism;
5. Welcoming the efforts of international organisations and institutions to fight against terrorism under the aegis of the UN and, in particular, the creation of the Counter-Terrorism Committee (CTC) by the Security Council of the UN and, in this respect:
6. Welcoming the co-operation between the Council of Europe and these organisations and institutions, in particular the EU, the OSCE and the UN;
7. Welcoming the decisions taken by the Committee of Ministers of the Council of Europe, in particular its Declaration of 12 September 2001, its Decision of 21 September 2001 and the outcome of the 109th, 110th and 111th Ministerial sessions and ;
8. Welcoming the adoption the Guidelines on Human Rights and the Fight against Terrorism on 11 July 2002;
9. Welcoming the setting up of the European Commission for Efficiency of Justice (CEPEJ) by the Council of Europe on 18 September 2002;
10. Considering the relevant texts adopted by the Parliamentary Assembly¹⁶;
11. Bearing in mind Resolution No. 1 adopted at their 24th Conference (Moscow, October 2001);
12. Resolved to pursue their efforts to reinforce the fight against terrorism and to increase the security of citizens, in a spirit of solidarity and on the basis of the common values to which the Council of Europe is firmly committed: the rule of law, human rights and pluralist democracy;

¹⁶ In particular, Recommendation REC 1534 (2001) Democracies facing terrorism; Recommendation REC 1550 (2002) and Resolution RES 1271 (2002) - Combating terrorism and respect for human rights; Recommendation REC 1549 (2002) - Air transport and terrorism: how to enhance security ? and Recommendation REC 1584 (2002) - The need for intensified international co-operation to neutralise funds for terrorist purposes.

13. Recognising the need to raise public awareness, through education and information, about the dangers of terrorism and encourage the public to co-operate with authorities against this form of criminality;
14. Convinced of the need to continue to strengthen international co-operation;

* * * *

15. WELCOME the results achieved by the Multidisciplinary Group on International Action against Terrorism (GMT) of the Council of Europe, in particular the drafting of the Protocol Amending the European Convention on the Suppression of Terrorism of 15 May 2003 (European Treaty Series, ETS No. 190);
16. CALL UPON the member States of the Council of Europe to become Parties to this Protocol to ensure its entry into force as soon as possible; and INVITE observer States to become Parties to the European Convention on the Suppression of Terrorism, as revised by its amending Protocol;
17. WELCOME the large number of member States of the Council of Europe which have become Parties to international treaties on terrorism, in particular, those concluded in the framework of the United Nations, as well as to the Rome Statute of the International Criminal Court; and INVITE those which have not yet done so to become Parties as soon as possible to these instruments and also to other international treaties concerning co-operation which are most relevant in the field of the fight against terrorism;
18. SUPPORT the priority counter-terrorism activities launched by the Council of Europe in response to Resolution No. 1 adopted at their 24th Conference (Moscow, October 2001); and in this respect:
19. WELCOME the setting up by the Committee of Ministers of the Committee of Experts on Terrorism (CODEXTER), responsible for coordinating the work of the Council of Europe in the field of the fight against terrorism;
20. INVITE the Committee of Ministers, on the one hand, to pursue without delay the work with a view to adopting relevant international instruments on the protection of witnesses and *pentiti* and on the use of SIT relating to acts of terrorism and, on the other hand, to review the European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983 (ETS No. 116) or, where necessary, adopt new rules concerning the improvement of the protection, support and compensation of victims of terrorist acts and their families;
21. CALL upon all member States to contribute to discussions in the United Nations with the intention to resolve the outstanding issues in negotiations on the draft UN Comprehensive Convention against terrorism and on the draft UN Convention for the suppression of acts of nuclear terrorism;
22. INVITE the Committee of Ministers to launch work with a view to examining, in the light of the opinion of the CODEXTER, the added value of a comprehensive European Convention against terrorism, open to observer States, or some elements of such a convention, which could be elaborated within the Council of Europe, and to contributing significantly to the UN efforts in this field;

23. INVITE the Committee of Ministers to entrust the CEPEJ with the task of ensuring the preparation of an assessment report on the effectiveness of national judicial systems in their responses to terrorism;
24. INVITE the Committee of Ministers, in the framework of the co-operation programmes with member States of the Council of Europe, to provide support for States in upgrading their counter-terrorism legislative and institutional capacities and to pursue effective co-ordination with other international bodies;
25. INVITE the Committee of Ministers to consider the feasibility of setting up a European register of national and international standards, starting as a matter of priority with standards in the field of the fight against terrorism;
26. ASK the Secretary General of the Council of Europe to report on the steps taken to give effect to this Resolution, on the occasion of their next Conference.

Appendix II

State of signatures and ratifications

Protocol amending the European Convention on the Suppression of Terrorism CETS No.: 190

Treaty open for signature by member States signatories to treaty ETS 90

Opening for signature

Place: Strasbourg
Date : 15/5/2003

Entry into force

Conditions: Ratification by Parties to treaty
ETS 90
Date : //

Status as of: 23/3/2005

Member States of the Council of Europe

States	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Albania	9/10/2003	15/11/2004								
Andorra	15/5/2003									
Armenia	15/5/2003	23/3/2004								
Austria	15/5/2003			13						
Azerbaijan	12/5/2004			13		X				
Belgium	15/5/2003			13						
Bosnia and Herzegovina	4/2/2005			13						
Bulgaria	15/5/2003	26/2/2004								
Croatia	17/9/2003			13						
Cyprus	15/5/2003	6/8/2004								
Czech Republic				13						
Denmark	15/5/2003	14/4/2004						X		
Estonia	15/5/2003			13						
Finland	15/5/2003			13						
France	15/5/2003			13						
Georgia	15/5/2003	8/12/2004		13						
Germany	15/5/2003			13						
Greece	15/5/2003			13	X					
Hungary	15/5/2003			13						
Iceland	15/5/2003			13						
Ireland	15/5/2003			13						
Italy	15/5/2003			13						
Latvia	5/5/2004	8/2/2005								

Liechtenstein	15/5/2003	8/2/2005																		
Lithuania	15/11/2004			13																
Luxembourg	11/6/2003	1/2/2005																		
Malta	15/12/2004			13																
Moldova	15/5/2003	10/3/2005		13		X	X													
Monaco																				
Netherlands	15/7/2003			13																
Norway	24/9/2003 s	24/9/2003 s																		
Poland	15/5/2003	10/11/2004																		
Portugal	15/5/2003			13																
Romania	15/5/2003	29/11/2004																		
Russia	15/5/2003			13																
San Marino	15/5/2003			13																
Serbia and Montenegro	15/5/2003			13																
Slovakia				13																
Slovenia	15/7/2003	11/5/2004																		
Spain	9/10/2003			13		X														
Sweden	15/5/2003			13																
Switzerland	15/5/2003			13																
the former Yugoslav Republic of Macedonia	15/5/2003			13																
Turkey	15/7/2003			13																
Ukraine	15/5/2003			13																
United Kingdom	15/5/2003			13																

Total number of signatures not followed by ratifications:	29
Total number of ratifications/accessions:	14

Notes:(13) State whose ratification is necessary for the entry into force of the Protocol.
a: Accession - s: Signature without reservation as to ratification - su: Succession - r: Signature "ad referendum".
R.: Reservations - D.: Declarations - A.: Authorities - T.: Territorial Application - C.: Communication - O.: Objection.

Source : Treaty Office on <http://conventions.coe.int>

Appendix III

State of signatures and ratifications

European Convention on the Suppression of Terrorism CETS No.: 090

Treaty open for signature by the member States of the Council of Europe

Opening for signature

Place: Strasbourg
Date : 27/1/1977

Entry into force

Conditions: 3 Ratifications.
Date : 4/8/1978

Status as of: 23/3/2005

Member States of the Council of Europe

States	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Albania	4/4/2000	21/9/2000	22/12/2000							
Andorra	8/11/2001									
Armenia	8/11/2001	23/3/2004	24/6/2004							
Austria	27/1/1977	11/8/1977	4/8/1978							
Azerbaijan	7/11/2001	11/2/2004	12/5/2004		X	X				
Belgium	27/1/1977	31/10/1985	1/2/1986		X	X				
Bosnia and Herzegovina	17/3/2003	3/10/2003	4/1/2004							
Bulgaria	11/9/1997	17/2/1998	18/5/1998		X					
Croatia	7/11/2001	15/1/2003	16/4/2003		X					
Cyprus	27/1/1977	26/2/1979	27/5/1979		X	X				
Czech Republic	13/2/1992	15/4/1992	1/1/1993	17						
Denmark	27/1/1977	27/6/1978	28/9/1978		X			X		
Estonia	3/5/1996	27/3/1997	28/6/1997		X					
Finland	16/11/1989	9/2/1990	10/5/1990		X					
France	27/1/1977	21/9/1987	22/12/1987		X	X		X		
Georgia	11/5/2000	14/12/2000	15/3/2001			X				
Germany	27/1/1977	3/5/1978	4/8/1978			X		X		
Greece	27/1/1977	4/8/1988	5/11/1988		X					
Hungary	3/5/1996	6/5/1997	7/8/1997		X					
Iceland	27/1/1977	11/7/1980	12/10/1980		X					
Ireland	24/2/1986	21/2/1989	22/5/1989							
Italy	27/1/1977	28/2/1986	1/6/1986		X					
Latvia	8/9/1998	20/4/1999	21/7/1999							
Liechtenstein	22/1/1979	13/6/1979	14/9/1979							

Lithuania	7/6/1996	7/2/1997	8/5/1997							
Luxembourg	27/1/1977	11/9/1981	12/12/1981							
Malta	5/11/1986	19/3/1996	20/6/1996		X					
Moldova	4/5/1998	23/9/1999	24/12/1999							
Monaco										
Netherlands	27/1/1977	18/4/1985	19/7/1985		X			X		
Norway	27/1/1977	10/1/1980	11/4/1980		X					
Poland	13/9/1995	30/1/1996	1/5/1996							
Portugal	27/1/1977	14/12/1981	15/3/1982		X					
Romania	30/6/1995	2/5/1997	3/8/1997							
Russia	7/5/1999	4/11/2000	5/2/2001			X				
San Marino	8/11/2001	17/4/2002	18/7/2002		X					
Serbia and Montenegro	15/5/2003	15/5/2003	16/8/2003		X					
Slovakia	13/2/1992	15/4/1992	1/1/1993	17						
Slovenia	28/3/2000	29/11/2000	1/3/2001							
Spain	27/4/1978	20/5/1980	21/8/1980							
Sweden	27/1/1977	15/9/1977	4/8/1978		X					
Switzerland	27/1/1977	19/5/1983	20/8/1983		X					
the former Yugoslav Republic of Macedonia	8/11/2001	29/11/2004	1/3/2005		X					
Turkey	27/1/1977	19/5/1981	20/8/1981							
Ukraine	8/6/2000	13/3/2002	14/6/2002							
United Kingdom	27/1/1977	24/7/1978	25/10/1978					X		

Total number of signatures not followed by ratifications:	1
Total number of ratifications/accessions:	44

Notes:(17) Dates of signature and ratification by the former Czech and Slovak Federal Republic.

a: Accession - s: Signature without reservation as to ratification - su: Succession - r: Signature "ad referendum".

R.: Reservations - D.: Declarations - A.: Authorities - T.: Territorial Application - C.: Communication - O.: Objection.

Source : Treaty Office on <http://conventions.coe.int>

Appendix IV

Draft Recommendation No. R (...) ... of the Committee of Ministers to Member States on “Special Investigation Techniques” in relation to Serious Crimes including Acts of Terrorism

*(Adopted by the Committee of Ministers on ...,
at the ... Meeting of the Ministers' Deputies)*

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

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

Recalling that in Resolution No. 1 on combating international terrorism adopted at the 24th Conference of European Ministers of Justice (Moscow, 4-5 October 2001), the Committee of Ministers was invited to adopt urgently all normative measures considered necessary for assisting states to prevent, detect, prosecute and punish acts of terrorism;

Considering that the final report of the Multidisciplinary Group on International Action against Terrorism (GMT) and the subsequent decisions of the Committee of Ministers recognise the use of special investigation techniques as a priority area of the Council of Europe's legal action against terrorism;

Recalling that in Resolution No. 1 on combating terrorism, adopted at the 25th Conference of European Ministers of Justice (Sofia, 9-10 October 2003), the Committee of Ministers was invited, *inter alia*, to pursue without delay work with a view to adopting relevant international instruments on the use of special investigation techniques;

Bearing in mind the final report on special investigation techniques in relation to acts of terrorism prepared by the Committee of Experts on Special Investigation Techniques in relation to Acts of Terrorism (PC-TI) and the opinions of the Committee of Experts on Terrorism (CODEXTER) and of the European Committee on Crime Problems (CDPC) thereon;

Bearing in mind the surveys on “best practices” against organised crime carried out by the Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime (PC-S-CO), as well as the reports adopted in the framework of the Council of Europe's technical co-operation programmes for the fight against corruption and organised crime;

Taking into account Recommendation No. R (96) 8 on crime policy in Europe in a time of change and Recommendation Rec(2001)11 concerning guiding principles in the fight against organised crime;

Taking into account the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, 28 January 1981) and its Additional Protocol on Supervisory Authorities and Transborder Data Flows (ETS No. 181, 8 November 2001); Recommendation No. R (87) 15 regulating the use of personal data in the police sector; and Recommendation No. R (95) 4 on the protection of personal

data in the area of telecommunication services, with particular reference to telephone services;

Taking into account the existing Council of Europe conventions on co-operation in the penal field, as well as similar treaties which exist between Council of Europe member states and other states;

Mindful of the Guidelines on human rights and the fight against terrorism, adopted by the Committee of Ministers of the Council of Europe on 11 July 2002;

Mindful of the obligation on member states to maintain a fair balance between ensuring public safety through law enforcement measures and securing the rights of individuals, as enshrined in the provisions of the European Convention on Human Rights and the case-law of the European Court of Human Rights in particular;

Considering that special investigation techniques are numerous, varied and constantly evolving and that their common characteristics are their secret nature and the fact that their application could interfere with fundamental rights and freedoms;

Recognising that the use of special investigation techniques is a vital tool for the fight against the most serious forms of crime, including acts of terrorism;

Aware that the use of special investigation techniques in criminal investigations requires confidentiality and that any efforts to pursue the commission of serious crime, including acts of terrorism, should where appropriate be thwarted with secured covert means of operation;

Aware of the need to reinforce the effectiveness of special investigation techniques by developing common standards governing their proper use and the improvement of international co-operation in matters related to them;

Recognising that the development of such standards would contribute to further build public confidence as well as confidence amongst relevant competent authorities of the member states in the use of special investigation techniques,

Recommends that governments of member states:

i. be guided, when formulating their internal legislation and reviewing their criminal policy and practice, and when using special investigation techniques, by the principles and measures appended to this recommendation;

ii. ensure that all the necessary publicity for these principles and measures is distributed to competent authorities involved in the use of special investigation techniques.

Appendix

Chapter I – Definitions and scope

For the purpose of this recommendation, “special investigation techniques” means techniques applied by the competent authorities in the context of criminal investigations for the purpose of detecting and investigating serious crimes and suspects, aiming at gathering information in such a way as not to alert the target persons.

For the purpose of this recommendation, “competent authorities” means judicial, prosecuting and investigating authorities involved in deciding, supervising or using special investigation techniques in accordance with national legislation.

Chapter II – Use of special investigation techniques at national level

a. General principles

1. Member states should, in accordance with the requirements of the European Convention on Human Rights (ETS No. 5), define in their national legislation the circumstances in which, and the conditions under which, the competent authorities are empowered to resort to the use of special investigation techniques.

2. Member states should take appropriate legislative measures to allow, in accordance with paragraph 1, the use of special investigation techniques with a view to making them available to their competent authorities to the extent that this is necessary in a democratic society and is considered appropriate for efficient criminal investigation and prosecution.

3. Member states should take appropriate legislative measures to ensure adequate control of the implementation of special investigation techniques by judicial authorities or other independent bodies through prior authorisation, supervision during the investigation or ex post facto review.

b. Conditions of use

4. Special investigation techniques should only be used where there is sufficient reason to believe that a serious crime has been committed or prepared, or is being prepared, by one or more particular persons or an as-yet-unidentified individual or group of individuals.

5. Proportionality between the effects of the use of special investigation techniques and the objective that has been identified should be ensured. In this respect, when deciding on their use, an evaluation in the light of the seriousness of the offence and taking account of the intrusive nature of the specific special investigation technique used should be made.

6. Member states should ensure that competent authorities apply less intrusive investigation methods than special investigation techniques if such methods enable the offence to be detected, prevented or prosecuted with adequate effectiveness.

7. Member states should, in principle, take appropriate legislative measures to permit the production of evidence gained from the use of special investigation techniques before courts. Procedural rules governing the production and admissibility of such evidence shall safeguard the rights of the accused to a fair trial.

c. Operational guidelines

8. Member states should provide the competent authorities with the required technology, human and financial resources with a view to facilitating the use of special investigation techniques.

9. Member states should ensure that, with respect to those special investigation techniques involving technical equipment, laws and procedures take account of the new technologies. For this purpose, they should work closely with the private sector to obtain their assistance in order to ensure the most effective use of existing technologies used in special investigation techniques and to maintain effectiveness in the use of new technologies.

10. Member states should ensure, to an appropriate extent, retention and preservation of traffic and location data by communication companies, such as telephone and Internet service providers, in accordance with national legislation and international instruments, especially the European Convention on Human Rights and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).

11. Member states should take appropriate measures to ensure that the technology required for special investigation techniques, in particular with respect to interception of communications, meets minimum requirements of confidentiality, integrity and availability.

d. Training and co-ordination

12. Member states should ensure adequate training of competent authorities in charge of deciding to use, supervising and using special investigation techniques. Such training should comprise training on technical and operational aspects of special investigation techniques, training on criminal procedural legislation in connection with them and relevant training in human rights.

13. Member states should consider the provision of specialised advice at national level with a view to assisting or advising competent authorities in the use of special investigation techniques.

Chapter III – International co-operation

14. Member states should make use to the greatest extent possible of existing international arrangements for judicial or police co-operation in relation to the use of special investigation techniques. Where appropriate member states should also identify and develop additional arrangements for such co-operation.

15. Member states are encouraged to sign, to ratify and to implement existing conventions or instruments in the field of international co-operation in criminal matters in

areas such as exchange of information, controlled delivery, covert investigations, joint investigation teams, cross-border operations and training.

Relevant instruments include, *inter alia*:

- the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988;
- the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990 (ETS No. 141);
- the Criminal Law Convention on Corruption of 27 January 1999 (ETS No. 173);
- the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 8 November 2001 (ETS No. 182);
- the Convention on Cybercrime of 23 November 2001 (ETS No. 185);
- the United Nations Convention against Transnational Organized Crime of 15 November 2000 and the Protocols thereto;
- the United Nations Convention on Corruption of 31 October 2003.

16. Member states are encouraged to make better use of existing relevant international bodies, such as the Council of Europe, the European Judicial Network, Europol, Eurojust, the International Criminal Police Organization (Interpol) and the International Criminal Court, with a view to exchanging experience, further improving international co-operation and conducting best practice analysis in the use of special investigation techniques.

17. Member states should encourage their competent authorities to make better use of their international networks of contacts in order to exchange information on national regulations and operational experience with a view to facilitating the use of special investigation techniques in an international context. If needed, new networks should be developed.

18. Member states should promote compliance of technical equipment with internationally agreed standards with a view to overcoming technical obstacles in the use of special investigation techniques in an international context, including those connected with interceptions of mobile telecommunications.

19. Member states are encouraged to take appropriate measures to promote confidence between their respective competent authorities in charge of deciding to use, supervising or using special investigation techniques with a view to improving their efficiency in an international context, while ensuring full respect for human rights.

Appendix V

Draft Recommendation Rec(2005)... of the Committee of Ministers to member states concerning protection of witnesses and collaborators of justice

*(Adopted by the Committee of Ministers on ...,
at the ... Meeting of the Ministers' Deputies)*

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

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

Aware of the need for member states to develop a common crime policy in relation to witness protection;

Noting that there is growing recognition of the special role of witnesses in criminal proceedings and that their evidence is often crucial to securing the conviction of offenders, especially in respect of serious crime;

Considering that in some areas of criminality, such as organised crime and terrorism, there is an increasing risk that witnesses will be subjected to intimidation;

Considering that the final report of the Multidisciplinary Group on International Action against Terrorism (GMT) and the subsequent decisions of the Committee of Ministers recognise the protection of witnesses and collaborators of justice as a priority area of the Council of Europe's legal action against terrorism;

Recalling that in Resolution No. 1 on Combating International Terrorism approved at the 24th Conference of European Ministers of Justice (Moscow, 4-5 October 2001), the Committee of Ministers was invited to adopt urgently all normative measures considered necessary for assisting states to prevent, detect, prosecute and punish acts of terrorism, such as the improvement of the protection of witnesses and other persons participating in proceedings involving persons accused of terrorist crimes;

Recalling that in Resolution No. 1 on Combating Terrorism approved at the 25th Conference of European Ministers of Justice (Sofia, 9-10 October 2003), the Committee of Ministers was invited to, *inter alia*, pursue without delay the work with a view to adopting relevant international instruments on the protection of witnesses and collaborators of justice;

Convinced that, while all persons have a civic duty to give sincere testimony as witnesses if so required by the criminal justice system, there should also be greater recognition given to their rights and needs, including the right not to be subject to any undue interference or be placed at personal risk;

Considering that member states have a duty to protect witnesses against such interference by providing them with specific protection measures aimed at effectively ensuring their safety;

Considering that it is unacceptable for the criminal justice system to fail to bring defendants to trial and obtain a judgment because witnesses have been effectively discouraged from testifying freely and truthfully;

Aware that the protection of witnesses and collaborators of justice requires confidentiality and that efforts should be made to ensure that effective measures are taken to thwart attempts to trace witnesses and collaborators of justice, in particular by criminal organisations, including terrorist organisations;

Bearing in mind the provisions of the European Convention on Human Rights (ETS No. 5) and the case-law of its organs, which recognise the rights of the defence to examine the witness and to challenge his/her testimony;

Taking into account Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence, in particular with respect to the measures to be taken in relation to vulnerable witnesses, especially in cases of crime within the family; Recommendation No. R (85) 4 on violence in the family, Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, Recommendation No. R (87) 21 on assistance to victims and the prevention of victimisation, Recommendation No. R (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults and Recommendation No. R (96) 8 on crime policy in Europe in a time of change,

Recommends that governments of member states:

- i. be guided, when formulating their internal legislation and reviewing their criminal policy and practice, by the principles and measures appended to this recommendation;
- ii. ensure that all the necessary publicity for these principles and measures is distributed to all interested bodies, such as judicial organs, investigating and prosecuting authorities, bar associations, and relevant social institutions.

Appendix

I. Definitions

For the purposes of this recommendation:

- "witness" means any person who possesses information relevant to criminal proceedings about which he/she has given and/or is able to give testimony (irrespective of his/her status and of the direct or indirect, oral or written form of the testimony, in accordance with national law), who is not included in the definition of "collaborator of justice";
- "collaborator of justice" means any person who faces criminal charges, or has been convicted of taking part in a criminal association or other criminal organisation of any kind, or in offences of organised crime, but who agrees to co-operate with criminal justice authorities, particularly by giving testimony about a criminal association or organisation, or about any offence connected with organised crime or other serious crimes;
- "intimidation" means any direct or indirect threat carried out or likely to be carried out to a witness or collaborator of justice, which may lead to interference with his/her willingness to give testimony free from undue interference, or which is a consequence of his/her testimony;
- "anonymity" means that the identifying particulars of the witness are not generally divulged to the opposing party or to the public in general;
- "people close to witnesses and collaborators of justice" includes the relatives and other persons in a close relationship to the witnesses and the collaborators of justice, such as the partner, (grand)children, parents and siblings;
- "protection measures" are all individual procedural or non-procedural measures aimed at protecting the witness or collaborator of justice from any intimidation and/or any dangerous consequences of the decision itself to co-operate with justice;
- "protection programme" means a standard or tailor-made set of individual protection measures which are, for example, described in a memorandum of understanding, signed by the responsible authorities and the protected witness or collaborator of justice.

II. General Principles

1. Appropriate legislative and practical measures should be taken to ensure that witnesses and collaborators of justice may testify freely and without being subjected to any act of intimidation.
2. While respecting the rights of the defence, the protection of witnesses, collaborators of justice and people close to them should be organised, where necessary, before, during and after the trial.

3. Acts of intimidation of witnesses, collaborators of justice and people close to them should, where necessary, be made punishable either as separate criminal offences or as part of the offence of using illegal threats.
4. Subject to legal privileges providing the right of some persons to refuse to give testimony, witnesses and collaborators of justice should be encouraged to report any relevant information regarding criminal offences to the competent authorities and thereafter agree to give testimony in court.
5. While taking into account the principle of free assessment of evidence by courts and the respect of the rights of the defence, procedural law should enable the impact of intimidation on testimonies to be taken into consideration and statements made during the preliminary phase of the procedure to be allowed (and/or used) in court..
6. While respecting the rights of the defence, alternative methods of giving evidence which protect witnesses and collaborators of justice from intimidation resulting from face-to-face confrontation with the accused should be considered.
7. Criminal justice personnel should have adequate training and guidelines to deal with cases where witnesses might require protection measures or programmes.
8. All the stages of the procedure related to the adoption, implementation, modification and revocation of protection measures or programmes should be kept confidential; the unauthorised disclosure of this information should be made punishable as a criminal offence where appropriate, especially to ensure the security of a protected person.
9. The adoption of protection measures or programmes should also take into account the need to strike an adequate balance with the principle of safeguarding the rights and expectations of victims.

III. Protection measures and programmes

10. When designing a framework of measures to combat serious offences, including those related to organised crime and terrorism, and violations of international humanitarian law, appropriate measures should be adopted to protect witnesses and collaborators of justice against intimidation.
11. No terrorism-related crimes should be excluded from the offences for which specific witness protection measures/programmes are envisaged.
12. The following criteria should, *inter alia*, be taken into consideration when deciding upon the entitlement of a witness/collaborator of justice to protection measures or programmes:
 - involvement of the person to be protected (as a victim, witness, co-perpetrator, accomplice or aider and abetter) in the investigation and/or in the case;
 - relevance of the contribution;
 - seriousness of the intimidation;
 - willingness and suitability to being subject to protection measures or programmes

13. When deciding upon the adoption of protection measures it should also be considered, in addition to the criteria mentioned in paragraph 12, whether there is no other evidence available that could be deemed sufficient to establish a case related to serious offences.
14. Proportionality between the nature of the protection measures and the seriousness of the intimidation of the witness/collaborator of justice should be ensured.
15. Witnesses/collaborators of justice being subjected to the same kind of intimidation should be entitled to similar protection. However, any protection measures/programmes adopted will need to take into account the particular characteristics of the matter and the individual needs of the person(s) to be protected.
16. Procedural rules aimed at the protection of witnesses and collaborators of justice should ensure that the balance necessary in a democratic society is maintained between the prevention of crime, the needs of the victims and witnesses and the safeguarding of the right to a fair trial.
17. While ensuring that the parties have adequate opportunity to challenge the evidence given by a witness/collaborator of justice, the following measures aimed at preventing identification of the witness may, *inter alia*, be considered :
 - audiovisual recording of statements made by witnesses/collaborators of justice during the preliminary phase of the procedure;
 - using statements given during the preliminary phase of the procedure as evidence in court when it is not possible for witnesses to appear before the court or when appearing in court might result in great and actual danger to the witnesses/collaborators of justice or to people close to them; pre-trial statements should be regarded as valid evidence if the parties have, or have had, the chance to participate in the examination and interrogate and/or cross-examine the witness and to discuss the contents of the statement during the procedure;
 - disclosing information which enables the witness to be identified at the latest possible stage of the proceedings and/or releasing only selected details;
 - excluding or restricting the media and/or the public from all or part of the trial;
 - using devices preventing the physical identification of witnesses and collaborators of justice, such as using screens or curtains, disguising the face of the witness or distorting his/her voice;
 - using video-conferencing.
18. Any decision to grant anonymity to a witness in criminal proceedings will be made in accordance with domestic law and European human rights law.
19. Where available, and in accordance with domestic law, anonymity of persons who might give evidence should be an exceptional measure. Where the guarantee of anonymity has been requested by such persons and/or temporarily granted by the competent authorities, criminal procedural law should provide for a verification procedure to maintain a fair balance between the needs of criminal justice and the rights of the parties. The parties should, through this procedure, have the opportunity to challenge the alleged need for anonymity of the witness, his/her credibility and the origin of his/her knowledge.
20. Any decision to grant anonymity should only be taken when the competent judicial authority finds that the life or freedom of the person involved, or of the persons close

to him or her, is seriously threatened, the evidence appears to be significant and the person appears to be credible.

21. When anonymity has been granted, the conviction should not be based solely, or to a decisive extent, on the evidence provided by anonymous witnesses.
22. Where appropriate, witness protection programmes should be set up and made available to witnesses and collaborators of justice who need protection. The main objective of these programmes should be to safeguard the life and personal security of witnesses/collaborators of justice, and people close to them, aiming in particular at providing the appropriate physical, psychological, social and financial protection and support.
23. Protection programmes implying dramatic changes in the life/privacy of the protected person (such as relocation and change of identity) should be applied to witnesses and collaborators of justice who need protection beyond the duration of the criminal trials where they give testimony. Such programmes, which may last for a limited period or for life, should be adopted only if no other measures are deemed sufficient to protect the witness/collaborator of justice and persons close to them.
24. The adoption of such programmes requires the informed consent of the person(s) to be protected and an adequate legal framework, including appropriate safeguards for the rights of the witnesses or collaborators of justice according to national law.
25. Where appropriate, protection measures could be adopted on an urgent and provisional basis before a protection programme is formally adopted.
26. Given the essential role that collaborators of justice may play in the fight against serious offences, they should be given adequate consideration. Where necessary, protection programmes applicable to collaborators of justice serving a prison sentence may also include specific arrangements such as special penitentiary regimes.
27. Protection of collaborators of justice should also be aimed at preserving their credibility and public security. Adequate measures should be undertaken to protect against the risk of the collaborators of justice committing further crimes while under protection and therefore, even involuntarily, jeopardising the case in court. The intentional perpetration of an offence by a collaborator of justice under protection should, according to the relevant circumstances, imply the revocation of protection measures.
28. While respecting the fundamental principles of administrative organisation of each state, staff dealing with the implementation of protection measures should be afforded operational autonomy and should not be involved either in the investigation or in the preparation of the case where the witness/collaborator of justice is to give evidence. Therefore, an organisational separation between these functions should be provided for. However, an adequate level of co-operation/contact with or between law-enforcement agencies should be ensured in order to successfully adopt and implement protection measures and programmes.

IV. International co-operation

29. While respecting the different legal systems and the fundamental principles of administrative organisation of each state, a common approach in international issues related to the protection of witnesses and collaborators of justice should be followed. Such a common approach should aim at ensuring proper professional standards, at least in the crucial aspects of confidentiality, integrity and training. Member states should ensure sufficient exchange of information and co-operation between the authorities responsible for protection programmes.
30. Measures aimed at fostering international co-operation should be adopted and implemented in order to facilitate the examination of protected witnesses and collaborators of justice and to allow protection programmes to be implemented across borders.
31. The scope and the effective and rapid implementation of international co-operation in matters related to the protection of witnesses and collaborators of justice, including with relevant international jurisdictions, should be improved.
32. The following objectives should, for example, be considered:
 - to provide assistance in relocating abroad protected witnesses, collaborators of justice and persons close to them and ensuring their protection, in particular in those cases where no other solution can be found for their protection;
 - to facilitate and improve the use of modern means of telecommunication such as video-links, and the security thereof, while safeguarding the rights of the parties;
 - to co-operate and exchange best practices through the use of already existing networks of national experts;
 - to contribute to the protection of witnesses and collaborators of justice within the context of co-operation with international criminal courts.

Appendix VI

Recommendation Rec (2005) 7 of the Committee of Ministers to member states concerning identity and travel documents and the fight against terrorism

*(Adopted by the Committee of Ministers on 30 March 2005,
at the 921st meeting of the Ministers' Deputies)*

1. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
2. Considering that the aim of the Council of Europe is to achieve greater unity between its members;
3. Bearing in mind Resolution No.1 on combating international terrorism approved at the 24th Conference of European Ministers of Justice (Moscow, 4-5 October 2001) and Resolution No.1 on combating terrorism approved at the 25th Conference of European Ministers of Justice, (Sofia, 9-10 October 2003);
4. Considering that the final report of the Multidisciplinary Group on International Action against Terrorism (GMT) and the subsequent decisions of the Committee of Ministers recognise the field of identity and identity and travel documents as a priority area for the Council of Europe's legal action against terrorism;
5. Bearing in mind the Final Activity Report of the Group of Specialists on Identity and Terrorism (CJ-S-IT) of 23 April 2004 and the opinion of the Committee of Experts on Terrorism (Codexter) thereon ;
6. Taking into account the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its Additional Protocol, regarding supervisory authorities and transborder data flows (ETS No. 181);
7. Taking into account the European Convention on Nationality (ETS No. 166);
8. Bearing in mind the provisions of the European Convention on Human Rights, in particular Articles 8, 13, 14 and 15, and the relevant case-law of the European Court of Human Rights;
9. Mindful of the Guidelines on human rights and the fight against terrorism, adopted by the Committee of Ministers on 11 July 2002;
10. Bearing in mind the work of the International Civil Aviation Organization (ICAO) in the field of standard setting for travel documents, and in particular the ICAO standards for machine- readable travel documents and current developments concerning the introduction of globally interoperable biometrics;
11. Bearing in mind the work of the International Commission on Civil Status (ICCS) and its Convention No. 26 on the international exchange of information relating to civil status (12 September 1997);
12. Acknowledging that the overwhelming majority of persons applying for or using identity and travel documents do so for lawful purposes;

13. Considering, however, that proper, rapid and reliable identification of individuals is of the utmost importance in order to fight terrorism and facilitate secure international travel, in particular as regards the issuing of identity and travel documents,

Recommends that governments of member states:

i. be guided, when formulating their internal legislation and reviewing their policy and practice relating to identity and travel documents, by the principles appended to this recommendation, in order to combat fraud and other forms of abuse in the context of the fight against terrorism;

ii. ensure that these principles are disseminated as broadly as possible to their competent authorities and in particular to those involved in the issuing and control of identity and travel documents.

Appendix to Recommendation Rec (2005) 7 of the Committee of Ministers to member states concerning identity and travel documents and the fight against terrorism

I. Definitions

For the purposes of this recommendation:

- “identity” means a unique combination of characteristics relating to every natural person
- such as last name, first name, date and place of birth, gender and physical characteristics
- that, in accordance with national law, or international law where appropriate, permits his or her identification by the competent authorities..

- "identity document" means any document that is issued by the competent authorities according to national law in order to confirm the identity of the document holder.

- “travel document” means any official document issued by a state or competent organisation that is used by the document holder for international travel (for example passport, visa or identity document) and contains mandatory visual (eye-readable) data and, generally, an image of the holder.

II. Security of identity and travel documents

1. Member states should take all legislative and other appropriate measures, including technical and organisational measures, to strengthen the physical security of identity and travel documents and the integrity of application and issuing procedures, especially with regard to verifying the identity of applicants.

2. Member states should take all appropriate measures to ensure that records of issued identity and travel documents, including all relevant personal data, and biometric data where appropriate, are secure and accessible for verification by their competent authorities.

3. Member states, if they do not already, should comply with ICAO standard 9303 on machine-readable travel documents, for all documents confirming identity and nationality that are used for crossing borders by all categories of travellers, including sea-farers. In particular, member states are encouraged to develop biometric standards in their travel documents to the highest possible level, in line with the globally interoperable standards developed by ICAO.

4. Member states should take all appropriate measures to ensure that the loss or theft of identity and travel documents is reported as soon as possible to the competent authorities by their rightful holders. Member states should refrain from issuing replacement documents unless this procedure is followed.

5. Member states should take all appropriate measures to ensure that identity and travel documents reported lost or stolen are automatically considered null and void. If such documents are recovered after new documents have been issued, member states should ensure that the lost or stolen documents are not reactivated.

6. Member states are encouraged to consider appropriate measures covering the use of identity and travel documents, including measures to prevent unauthorised copying of these documents, and to issue guidance on the rights and responsibilities of private and public bodies, as well as those of the holder of the document.

7. Member states should take all appropriate measures to ensure that information is collected on the issuance and serial numbers of lost or stolen identity and travel documents, whether issued or blank.

III. Proof of identity

8. Member states should take all appropriate measures to promote the creation and development of systems that allow for rapid and reliable identity checks to be carried out with reference to civil-status records and, where appropriate, nationality records and population registers, in accordance with national legislation and international instruments, in particular the Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (ETS No. 108). Such systems should, in particular, include provisions enabling cross-referencing between birth and death records and marriage registers, as appropriate.

9. Member states should take all appropriate measures to ensure that competent authorities, when presented with a birth certificate or another document in connection with an application for an identity or travel document, carry out checks using all relevant records and registers (of civil status and, where appropriate, population and nationality) and instigate other enquiries, where appropriate, in accordance with national legislation and international instruments.

IV. Registration of births and birth certificates

10. Member states should take all appropriate measures in order to avoid abuse in the framework of the registration of births and the issuing of birth certificates, as they are key documents that are necessary to obtain identity and travel documents. In particular, they should:

a. ensure that births are registered in civil-status records as soon after birth as possible;

b. take all appropriate measures to ensure that information provided to registrars is checked as far as possible, for example with medical personnel supervising the birth;

c. keep the conditions and procedures for issuing birth certificates under review;

d. if appropriate, consider the introduction of a national personal identification number allocated at the time of registration of birth, in accordance with national legislation and international instruments. If member states decide to use a national personal identification number, or any other unique identifier of general application, they should determine the conditions under which this number may be processed, in accordance with the Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data.

V. International co-operation

11. Member states are encouraged to co-operate with other member states regarding the identity of applicants and, where appropriate, with international law-enforcement bodies such as, Europol and Interpol, with regard to the rapid dissemination of information on trends and developments in the area of identity and travel documents. In particular, member states are encouraged to make information concerning lost or stolen identity and travel documents, whether issued or blank, available to other member states, as well as to Europol and Interpol.

12. Member states should try, as far as possible, to adopt or develop systems of updating all relevant records and registers (civil-status and, if appropriate, population and nationality) in order to be able to integrate events affecting their nationals or residents that occur in other countries, concerning nationality, marriage, divorce, death and change of name. To this end, they may consider the possibility of:

- adopting or developing effective systems of registration of modifications resulting from events occurring abroad;

- adopting or developing effective systems to notify those member states holding a person's civil-status records of events concerning that person which have occurred in another member state;

- ratify the ICCS Convention No. 26 on the international exchange of information relating to civil status (signed at Neuchâtel on 12 September 1997)

13. Member states are invited to consider ratifying the European Convention on Nationality (ETS No. 166). Having due regard to this instrument and the problems that might arise in the context of terrorism, they are encouraged to exchange information in the area of nationality in order to deal with matters of common interest and thereby contribute to the prevention of the misuse of nationality laws.