

Strasbourg, 13/09/05

CAHDI (2005) Inf. 10

**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

**30th meeting
Strasbourg, 19 - 20 September 2005**

**FIGHT AGAINST TERRORISM – INFORMATION ABOUT WORK UNDERTAKEN IN THE
COUNCIL OF EUROPE**

Secretariat memorandum
Prepared by the Directorate General of Legal Affairs

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The fight against terrorism Council of Europe activities in the legal area

Background

The Council of Europe has been dedicated since 1949 to upholding human rights, the rule of law and pluralist democracy, and is determined to combat terrorism which repudiates these three fundamental values. The Council of Europe has worked in this field since the 1970s but its efforts were stepped up in 2001 following the atrocious terrorist attacks in the United States.

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 discussing and adopting regional standards and best practice and for providing assistance to its member States in improving their counter-terrorism capacity.

The Council of Europe's activities in the field of the fight against terrorism are based on three cornerstones:

- strengthening legal action against terrorism
- safeguarding fundamental values
- addressing the causes of terrorism.

Coordination of the Council of Europe's legal action

The Council of Europe set up two intergovernmental committees of experts to coordinate its activities in the area of legal action against terrorism: the Multidisciplinary Group on International Action against Terrorism (GMT) set up in 2001 to revise the European Convention on the Suppression of Terrorism (1977) and identify priorities for future action by the Council of Europe, and replaced in 2003 by the Committee of Experts on Terrorism (CODEXTER) set up to coordinate the implementation of activities in the priority areas identified by the GMT, namely:

- research on the concepts of "*apologie du terrorisme*" and "incitement to terrorism";
- special investigation techniques;
- protection of witnesses and collaborators of justice;
- international co-operation on law enforcement;
- action to cut terrorists off from funding sources;
- questions of identity documents which arise in connection with terrorism.

The 24th and 25th Conference of European Ministers of Justice held respectively in Moscow (2001) and Sofia (2003) provided new impetus and new tasks, namely:

- protection, support and compensation of victims of terrorist acts;
- assessment of the effectiveness of national judicial systems in their response to terrorism;
- support for the upgrading of member States' legislative and institutional counter-terrorism capacities;
- feasibility of setting up a European register of national and international standards, starting with standards in the field of the fight against terrorism;
- possible added value of a comprehensive European Convention against terrorism, which would contribute significantly to the UN efforts in this field.

As a result of that work, the Council of Europe has produced several international instruments and publications, namely three international treaties dealing with suppression of terrorism, prevention of terrorism and money laundering and terrorist financing (see below), and three recommendations

of the Committee of Ministers to member states relating to special investigation techniques (Recommendation Rec (2005)10), protection of witnesses and collaborators of justice (Recommendation Rec (2005) 9), and questions of identity documents which arise in connection with terrorism (Recommendation Rec (2005) 7).

These new standards joined the *Guidelines on Human Rights and the Fight Against Terrorism* adopted by the Committee of Ministers in 2002, the additional *Guidelines on the Protection of Victims of Terrorist Acts* (2005), a *Declaration on freedom of expression and information in the media in the context of the fight against terrorism* (2005) and a *Policy Recommendation on Combating Racism While Fighting Terrorism* (2004).

Indeed, the Council of Europe's efforts to strengthen legal action against terrorism are based on the fundamental principle that it is possible and necessary to fight terrorism while respecting human rights, fundamental freedoms and the rule of law.

The Revised European Convention on the Suppression of Terrorism

The Amending Protocol [ETS No. 190] to the 1977 European Convention on the Suppression of Terrorism [ETS No. 90], elaborated by the GMT, was opened for signature on 15 May 2003.

It introduces a number of significant changes to the Convention:

- a substantial extension of the list of offences which may never be regarded as political or politically motivated, which now includes all the offences covered by all the UN anti-terrorist conventions
- the introduction of a simplified amendment procedure allowing new offences to be added to the list
- the opening of the Convention to observer states and, subject to a Committee of Ministers' decision, to other non-member states
- the possibility of refusing to extradite offenders to countries where they risk the death penalty, torture or life imprisonment without parole
- a significant reduction of the possibilities to refuse extradition on the basis of reservations to the Convention and such refusal will be subject to a specific follow-up procedure, which will also apply to the follow-up of any obligation under the Convention as amended.

To date it has been ratified by 18 member states and signed by a further 26 states. It will enter into force when the 44 States Parties to the European Convention on the Suppression of Terrorism have ratified it.

The Council of Europe Convention on the Prevention of Terrorism [CETS No. 196]

The Council of Europe Convention on the Prevention of Terrorism, opened for signature in 16 May 2005, aims at covering some of the existing lacunae in the international law and action against terrorism which were identified in studies by international independent experts and by the CODEXTER.

The purpose of the Convention is:

- to prevent terrorism by measures to be taken at national level and through international co-operation;
- to establish as criminal offences acts that may lead to the commission of acts of terrorism including public provocation, recruitment and training;
- to reinforce co-operation on prevention, both internally, in the context of national prevention policies, and internationally by supplementing and, where necessary, modifying existing extradition and mutual assistance arrangements;
- to ensure the protection and compensation of victims of terrorism.

The Convention contains several provisions concerning the protection of human rights and fundamental freedoms both in terms of reinforcing co-operation internally and internationally (including grounds for refusal of extradition and mutual assistance) and of implementing the criminalisation of the new offences in the form of conditions and safeguards.

It will enter into force when it has received 6 ratifications. To date it has been signed by 19 member states.

The Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism [CETS No. 198]

In addition to preventing terrorist acts, depriving terrorists and other criminal groups of their assets and their funds is crucial. Quick access to financial information or information on assets held by terrorist or other criminal groups, is a key to successful preventive and repressive measures, and, ultimately, for disrupting their activities. It is for this reason that the Council of Europe decided to update and enlarge its 1990 Convention and adopted a new Convention to prevent and combat more effectively money laundering and the financing of terrorism, which was also opened for signature at the Warsaw Summit.

This new Convention will enable, *inter alia*, (a) rapidly to trace property or bank accounts and to take quick action to freeze funds, (b) quick access to financial information or information on assets held by criminal organisations, (c) Financial Intelligence Units (to be set up in each Party under the new Convention) effectively to co-operate to exchange information on suspected money laundering and the financing of terrorism in order ultimately to confiscate assets. The Convention also set up a monitoring system to ensure the effective implementation of its provisions.

The Convention will enter into force when it has received 6 ratifications. To date it has been signed by 13 member states.

Current priorities

With regard to strengthening legal action against terrorism, the current priorities are:

- the preparation of country profiles on counter-terrorism capacity;
- exchanges of information and best practice on compensation and insurance schemes for the victims of terrorism; and
- monitoring the signatures and ratifications of the above-mentioned conventions and to promote their early entry into force.

In addition to the above-mentioned activities, the CODEXTER pursues its work aimed at identifying gaps in international law and action against terrorism and proposing ways and means to fill them.

Country profiles

Country profiles are short reports which provide information on the legislative and institutional capacity of Council of Europe member and observer states to fight against terrorism.

So far the profiles of Belgium, Bulgaria, Germany, Latvia, Poland, Romania, Spain and the United Kingdom have been published. The profiles of Austria, Croatia, Hungary, Lithuania, Luxembourg, Slovenia, Turkey and the European Union are due to be published in the autumn of 2005.

The country profiles are available at www.coe.int/gmt in two formats: an HTML version containing hyperlinks to the relevant texts, and a downloadable and printable PDF version.

Exchanges of information and best practice on national compensation and insurance schemes

The CODEXTER pursues exchanges of information and best practice on the compensation and insurance schemes introduced in its member states, particularly in relation to victims of terrorist acts, with a view to providing a model for use in other countries. This includes examining states' general legal framework for the protection of victims of terrorism and the key elements of their compensation systems.

So far the Committee has examined the compensation and insurance schemes in place in Belgium, France, Norway and Spain and will examine those of Sweden, Turkey and the United Kingdom in the autumn of 2005.

The Council of Europe Co-operation programme to strengthen the rule of law

The Council of Europe set up a number of specific legal co-operation programmes open to all member and applicant States. These programmes are designed to help beneficiary countries to proceed with their institutional, legislative and administrative reforms. They chiefly involve working with governmental authorities to prepare and introduce legal and operational frameworks adapted to a country's specific needs and features and consistent with fundamental European standards and principles and to ensure that reforms are concretely implemented with respect for these principles.

The activities are defined in close co-operation with the countries concerned and with other international organisations, on the basis of the specific features of the beneficiary States. Co-operation activities are essentially based on multilateral, regional or bilateral information and training seminars, expert appraisals, needs-assessments and study visits.

Council of Europe relevant instruments and documents

Conventions

- European Convention on the Suppression of Terrorism (ETS No. 90) and Amending Protocol (ETS No. 190)
- European Convention on Extradition (ETS No. 24) and first and second Additional Protocols (ETS No. 86 and 98)
- European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and first and second Additional Protocols (ETS No. 99 and 182)
- European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 73)
- European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116)
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141)
- Convention on Cybercrime [ETS No. 185] and Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189)
- Council of Europe Convention on the prevention of terrorism [CETS No. 196]
- Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism [CETS No. 198]

Committee of Ministers

- Declaration on Terrorism (1978)
- Tripartite Declaration on Terrorist Acts (1986)
- Resolution (74) 3 on International terrorism
- Recommendation R (82) 1 concerning International Co-operation in the Prosecution and Punishment of Acts of Terrorism
- Recommendation (2001) 11 concerning Guiding Principles on the Fight against Organised Crime
- Declaration on the Fight against International Terrorism (2001)
- Guidelines on Human Rights and the Fight against Terrorism (2002)
- Guidelines on the Protection of victims of terrorist acts (2005)
- Declaration on freedom of expression and information in the media in the context of the fight against terrorism (2005)
- Recommendation Rec(2005)7 of the Committee of Ministers to member states concerning identity and travel documents and the fight against terrorism
- Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice
- Recommendation Rec(2005)10 of the Committee of Ministers to member states on “special investigation techniques” in relation to serious crimes including acts of terrorism

Parliamentary Assembly Recommendations and Resolutions

- Recommendations No. 684 (1972) and 703 (1973) on International Terrorism
- Recommendation No. 852 (1979) on Terrorism in Europe
- Recommendation No. 916 (1981) on the Conference on the Defence of Democracy against Terrorism in Europe – Tasks and Problems
- Recommendations No. 941 (1982) and 982 (1984) on the Defence of Democracy against Terrorism in Europe
- Recommendation No. 1024 (1986) and Res. No. 863 (1986) on the European Response to International Terrorism

- Recommendation No. 1170 (1991) on strengthening the European Convention on the Suppression of Terrorism
- Recommendation No. 1199 (1992) on the Fight against International Terrorism in Europe
- Recommendation No. 1132 (1997) on the Organisation of a Parliamentary Conference to reinforce Democratic Systems in Europe and Co-operation in the Fight against Terrorism
- Recommendation No. 1426 (1999) and Order 555 (1999) on European Democracies facing up to Terrorism
- Recommendation No. 1534 (2001) and Res. No. 1258 (2001) on Democracies facing Terrorism
- Recommendation No. 1550 (2002) and Res. No. 1271 (2002) on Combating Terrorism and Respect for Human Rights
- Recommendation No. 1549 (2002) on Air Transport and Terrorism: how to enhance security
- Recommendation No. 1584 (2002) on the Need for Intensified International Co-operation to Neutralise Funds for Terrorist Purposes
- Recommendation No. 1644 (2004) on Terrorism: a threat to democracies
- Resolution 1367 (2004) on Bioterrorism: a serious threat for citizens' health
- Resolution 1400 (2004) on the Challenge of terrorism in Council of Europe member states
- Recommendation 1677 (2004) on the Challenge of terrorism in Council of Europe member states
- Recommendation 1687 (2004) on Combating terrorism through culture

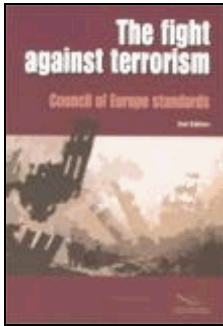
Congress of Local and Regional Authorities

- Recommendation 134 (2003) and Resolution 159 (2003) on Tackling Terrorism - the role and responsibilities of Local Authorities.

European Commission against Racism and Intolerance

- European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 8 on combating racism while fighting terrorism (2004)

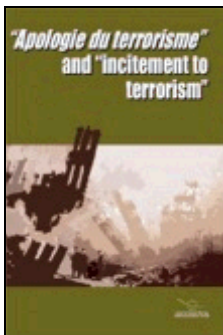
Council of Europe Publications



The fight against terrorism - Council of Europe standards (2004)

The Council of Europe has drafted a number of international legal instruments and standards reflecting the importance it attaches to combating terrorism and illustrating the underlying message of this Organisation, which is that it is possible to fight against terrorism efficiently while upholding the basic values that are the common heritage of the European continent. This publication contains these texts and is intended to provide a handy, comprehensive reference document.

ISBN: 92-871-5739-1, € 39 / US\$ 59
3rd edition available in Autumn 2005

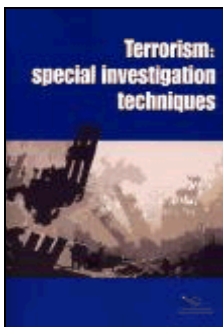


« Apologie du Terrorisme » and « Incitement to terrorism » (2004)

The fight against terrorism must never lead to a curtailing of the values and freedoms terrorists intend to destroy: the rule of law and freedom of thought and expression must never be sacrificed in this struggle.

This report analyses the situation in member and observer States of the Council of Europe and their different legal approaches to the phenomenon of public expression of praise, justification and other forms of support for terrorism and terrorists, referred to in this publication as "apologie du terrorisme" and "incitement to terrorism".

ISBN: 92-871-5468-6, € 19 / US\$ 29

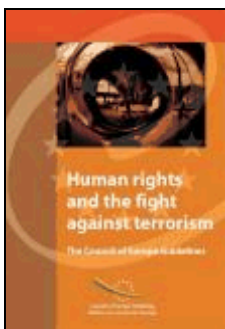


Terrorism: Special investigation techniques (2005)

In order to combat terrorism and serious crime, law enforcement authorities have had to adapt their investigative means and develop special investigation techniques. Since there is a risk that they may infringe individual rights, special investigation techniques must be subject to control.

This publication contains an analytical report, which examines special investigation techniques in relation to law enforcement and prosecution, the control of their implementation, human rights and international co-operation and also contains a survey of national practice.

ISBN: 92-871-5655-7, € 39 / US\$ 59

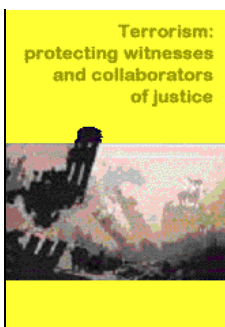


Human rights and the fight against terrorism – The Council of Europe Guidelines (2005)

The Council of Europe believes that an effective fight against terrorism fully respecting human rights is possible.

This publication contains the Guidelines on Human Rights and the fight against terrorism, the first international instrument in this area, and the Guidelines on the protection of victims of terrorist acts, together with the reference and supporting texts and relevant case-law of the European Court of Human Rights.

ISBN 92-871-5694-8, 60 pages, €8/US\$12



Terrorism: Protection of witnesses and collaborators of justice (2005)

In order to combat terrorism, states often rely 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 endanger the success of prosecutions often based on long and complicated investigations. Strengthening international co-operation in this field is also a useful means to ensure the protection of those persons whose protection would prove difficult on a merely national basis, given the conditions in the country where they are located.

This publication contains the recently adopted standards in this field and a summary of relevant case-law from European Court of Human Rights, as well as a survey of national laws and practice in Council of Europe member and observer states together with an analytical report.

Available end of 2005

Order from: <http://book.coe.int> or from specialised bookshops

**Chart of signatures and ratifications of the
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: 13/9/2005

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	10/5/2005								
Cyprus	15/5/2003	6/8/2004								
Czech Republic				13						
Denmark	15/5/2003	14/4/2004						X		
Estonia	15/5/2003	26/5/2005								
Finland	15/5/2003	27/5/2005								
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	7/4/2005			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	20/5/2005									
Ukraine	15/5/2003			13							
United Kingdom	15/5/2003			13							

Total number of signatures not followed by ratifications:	26
Total number of ratifications/accessions:	18

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>

Council of Europe Convention on the Prevention of Terrorism

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

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

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

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

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

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

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

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

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

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

Have agreed as follows:

Article 1 – Terminology

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

Article 2 – Purpose

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

Article 3 – National prevention policies

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

Article 4 – International co-operation on prevention

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

Article 5 – Public provocation to commit a terrorist offence

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

Article 6 – Recruitment for terrorism

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

Article 7 – Training for terrorism

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

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

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

Article 8 – Irrelevance of the commission of a terrorist offence

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

Article 9 – Ancillary offences

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

Article 10 – Liability of legal entities

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

Article 11 – Sanctions and measures

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

Article 12 – Conditions and safeguards

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

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

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

Article 14 – Jurisdiction

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

Article 15 – Duty to investigate

- 1 Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in this Convention may be present in its territory, the Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.
- 2 Upon being satisfied that the circumstances so warrant, the Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.
- 3 Any person in respect of whom the measures referred to in paragraph 2 are being taken shall be entitled to:
 - a communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
 - b be visited by a representative of that State;
 - c be informed of that person's rights under subparagraphs a. and b.
- 4 The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the Party in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
- 5 The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any Party having a claim of jurisdiction in accordance with Article 14, paragraphs 1.c and 2.d to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

Article 16 – Non application of the Convention

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

Article 17 – International co-operation in criminal matters

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

Article 18 – Extradite or prosecute

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

Article 19 – Extradition

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

Article 20 – Exclusion of the political exception clause

- 1 None of the offences referred to in Articles 5 to 7 and 9 of this Convention, shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence, an offence connected with a political offence, or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.
- 2 Without prejudice to the application of Articles 19 to 23 of the Vienna Convention on the Law of Treaties of 23 May 1969 to the other Articles of this Convention, any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession of the Convention, declare that it reserves the right to not apply paragraph 1 of this Article as far as extradition in respect of an offence set forth in this Convention is concerned. The Party undertakes to apply this reservation on a case-by-case basis, through a duly reasoned decision.
- 3 Any Party may wholly or partly withdraw a reservation it has made in accordance with paragraph 2 by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

- 4 A Party which has made a reservation in accordance with paragraph 2 of this Article may not claim the application of paragraph 1 of this Article by any other Party; it may, however, if its reservation is partial or conditional, claim the application of this Article in so far as it has itself accepted it.
- 5 The reservation shall be valid for a period of three years from the day of the entry into force of this Convention in respect of the Party concerned. However, such reservation may be renewed for periods of the same duration.
- 6 Twelve months before the date of expiry of the reservation, the Secretary General of the Council of Europe shall give notice of that expiry to the Party concerned. No later than three months before expiry, the Party shall notify the Secretary General of the Council of Europe that it is upholding, amending or withdrawing its reservation. Where a Party notifies the Secretary General of the Council of Europe that it is upholding its reservation, it shall provide an explanation of the grounds justifying its continuance. In the absence of notification by the Party concerned, the Secretary General of the Council of Europe shall inform that Party that its reservation is considered to have been extended automatically for a period of six months. Failure by the Party concerned to notify its intention to uphold or modify its reservation before the expiry of that period shall cause the reservation to lapse.
- 7 Where a Party does not extradite a person in application of this reservation, after receiving an extradition request from another Party, it shall submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution, unless the requesting Party and the requested Party agree otherwise. The competent authorities, for the purpose of prosecution in the requested Party, shall take their decision in the same manner as in the case of any offence of a grave nature under the law of that Party. The requested Party shall communicate, without undue delay, the final outcome of the proceedings to the requesting Party and to the Secretary General of the Council of Europe, who shall forward it to the Consultation of the Parties provided for in Article 30.
- 8 The decision to refuse the extradition request on the basis of this reservation shall be forwarded promptly to the requesting Party. If within a reasonable time no judicial decision on the merits has been taken in the requested Party according to paragraph 7, the requesting Party may communicate this fact to the Secretary General of the Council of Europe, who shall submit the matter to the Consultation of the Parties provided for in Article 30. This Consultation shall consider the matter and issue an opinion on the conformity of the refusal with the Convention and shall submit it to the Committee of Ministers for the purpose of issuing a declaration thereon. When performing its functions under this paragraph, the Committee of Ministers shall meet in its composition restricted to the States Parties.

Article 21 – Discrimination clause

- 1 Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested Party has substantial grounds for believing that the request for extradition for offences set forth in Articles 5 to 7 and 9 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.
- 2 Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the person who is the subject of the extradition request risks being exposed to torture or to inhuman or degrading treatment or punishment.
- 3 Nothing in this Convention shall be interpreted either as imposing an obligation to extradite if the person who is the subject of the extradition request risks being exposed to the death penalty or, where the law of the requested Party does not allow for life imprisonment, to life imprisonment without the possibility of parole, unless under applicable extradition treaties the requested Party is under the obligation to extradite if the requesting Party gives such assurance as the requested Party considers sufficient that the death penalty will not be imposed or, where imposed, will not be carried out, or that the person concerned will not be subject to life imprisonment without the possibility of parole.

Article 22 – Spontaneous information

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

Article 23 – Signature and entry into force

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

Article 24 – Accession to the Convention

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

Article 25 – Territorial application

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

the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 26 – Effects of the Convention

- 1 The present Convention supplements applicable multilateral or bilateral treaties or agreements between the Parties, including the provisions of the following Council of Europe treaties:
 - European Convention on Extradition, opened for signature, in Paris, on 13 December 1957 (ETS No. 24);
 - European Convention on Mutual Assistance in Criminal Matters, opened for signature, in Strasbourg, on 20 April 1959 (ETS No. 30);
 - European Convention on the Suppression of Terrorism, opened for signature, in Strasbourg, on 27 January 1977 (ETS No. 90);
 - Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, opened for signature in Strasbourg on 17 March 1978 (ETS No. 99);
 - Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, opened for signature in Strasbourg on 8 November 2001 (ETS No. 182);
 - Protocol amending the European Convention on the Suppression of Terrorism, opened for signature in Strasbourg on 15 May 2003 (ETS No. 190).
- 2 If two or more Parties have already concluded an agreement or treaty on the matters dealt with in this Convention or have otherwise established their relations on such matters, or should they in future do so, they shall also be entitled to apply that agreement or treaty or to regulate those relations accordingly. However, where Parties establish their relations in respect of the matters dealt with in the present Convention other than as regulated therein, they shall do so in a manner that is not inconsistent with the Convention's objectives and principles.
- 3 Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.
- 4 Nothing in this Convention shall affect other rights, obligations and responsibilities of a Party and individuals under international law, including international humanitarian law.
- 5 The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a Party in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

Article 27 – Amendments to the Convention

- 1 Amendments to this Convention may be proposed by any Party, the Committee of Ministers of the Council of Europe or the Consultation of the Parties.
- 2 Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the Parties.
- 3 Moreover, any amendment proposed by a Party or the Committee of Ministers shall be communicated to the Consultation of the Parties, which shall submit to the Committee of Ministers its opinion on the proposed amendment.
- 4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Consultation of the Parties and may approve the amendment.

- 5 The text of any amendment approved by the Committee of Ministers in accordance with paragraph 4 shall be forwarded to the Parties for acceptance.
- 6 Any amendment approved in accordance with paragraph 4 shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

Article 28 – Revision of the Appendix

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

Article 29 – Settlement of disputes

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

Article 30 – Consultation of the Parties

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

- 3 The Parties shall be assisted by the Secretariat of the Council of Europe in carrying out their functions pursuant to this Article.

Article 31 – Denunciation

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

Article 32 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the European Community, the non-member States which have participated in the elaboration of this Convention as well as any State which has acceded to, or has been invited to accede to, this Convention of:

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

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

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

Appendix

- 1 Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
- 2 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971;
- 3 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted in New York on 14 December 1973;
- 4 International Convention Against the Taking of Hostages, adopted in New York on 17 December 1979;
- 5 Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980;
- 6 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988;
- 7 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;
- 8 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988;
- 9 International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997;
- 10 International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999.

Chart of signatures and ratifications

Council of Europe Convention on the Prevention of Terrorism
CETS No.: 196

Treaty open for signature by the member States, the non-member States which have participated in its elaboration and by the European Community, and for accession by other non-member States

Opening for signature

Place: Warsaw
Date : 16/5/2005

Entry into force

Conditions: 6 Ratifications including 4 Member States.
Date : //

Status as of: 19/8/2005

Member States of the Council of Europe

[illegible]

Slovenia											
Spain	16/5/2005										
Sweden	16/5/2005										
Switzerland											
the former Yugoslav Republic of Macedonia											
Turkey											
Ukraine	16/5/2005										
United Kingdom	16/5/2005										

Non-member States of the Council of Europe

States	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Canada										
Holy See										
Japan										
Mexico										
United States										

International Organisations

Organisations	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
European Community										

Total number of signatures not followed by ratifications:	19
Total number of ratifications/accessions:	

Notes: 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>

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

Preamble

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

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

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

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

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

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

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

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

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

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

Have agreed as follows:

Chapter I – Use of terms

Article 1 – Use of terms

For the purposes of this Convention:

- a “proceeds” means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any property as defined in sub-paragraph b of this article;
- b “property” includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property;
- c “instrumentalities” means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;
- d “confiscation” means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property;
- e “predicate offence” means any criminal offence as a result of which proceeds were generated that may become the subject of an offence as defined in Article 9 of this Convention.
- f “financial intelligence unit” (hereinafter referred to as “FIU”) means a central, national agency responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information
 - i concerning suspected proceeds and potential financing of terrorism, or
 - ii required by national legislation or regulation,

in order to combat money laundering and financing of terrorism;

- g “freezing” or “seizure” means temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
- h “financing of terrorism” means the acts set out in Article 2 of the International Convention for the Suppression of the Financing of Terrorism, cited above.

Chapter II – Financing of terrorism

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

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

Chapter III – Measures to be taken at national level

Section 1 – General provisions

Article 3 – Confiscation measures

- 1 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds and laundered property.
- 2 Provided that paragraph 1 of this article applies to money laundering and to the categories of offences in the appendix to the Convention, each Party may, at the time of signature or when

depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies

- a only in so far as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year. However, each Party may make a declaration on this provision in respect of the confiscation of the proceeds from tax offences for the sole purpose of being able to confiscate such proceeds, both nationally and through international cooperation, under national and international tax-debt recovery legislation; and/or
 - b only to a list of specified offences.
- 3 Parties may provide for mandatory confiscation in respect of offences which are subject to the confiscation regime. Parties may in particular include in this provision the offences of money laundering, drug trafficking, trafficking in human beings and any other serious offence.
 - 4 Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law.

Article 4 – Investigative and provisional measures

Each Party shall adopt such legislative and other measures as may be necessary to enable it to identify, trace, freeze or seize rapidly property which is liable to confiscation pursuant to Article 3, in order in particular to facilitate the enforcement of a later confiscation.

Article 5 – Freezing, seizure and confiscation

Each Party shall adopt such legislative and other measures as may be necessary to ensure that the measures to freeze, seize and confiscate also encompass:

- a the property into which the proceeds have been transformed or converted;
- b property acquired from legitimate sources, if proceeds have been intermingled, in whole or in part, with such property, up to the assessed value of the intermingled proceeds;
- c income or other benefits derived from proceeds, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled, up to the assessed value of the intermingled proceeds, in the same manner and to the same extent as proceeds.

Article 6 – Management of frozen or seized property

Each Party shall adopt such legislative or other measures as may be necessary to ensure proper management of frozen or seized property in accordance with Articles 4 and 5 of this Convention.

Article 7 – Investigative powers and techniques

- 1 Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in Articles 3, 4 and 5. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy.
- 2 Without prejudice to paragraph 1, each Party shall adopt such legislative and other measures as may be necessary to enable it to:
 - a determine whether a natural or legal person is a holder or beneficial owner of one or more accounts, of whatever nature, in any bank located in its territory and, if so obtain all of the details of the identified accounts;
 - b obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more specified accounts, including the

particulars of any sending or recipient account;

- c monitor, during a specified period, the banking operations that are being carried out through one or more identified accounts; and,
- d ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been sought or obtained in accordance with sub-paragraphs a, b, or c, or that an investigation is being carried out.

Parties shall consider extending this provision to accounts held in non-bank financial institutions.

- 3 Each Party shall consider adopting such legislative and other measures as may be necessary to enable it to use special investigative techniques facilitating the identification and tracing of proceeds and the gathering of evidence related thereto, such as observation, interception of telecommunications, access to computer systems and order to produce specific documents.

Article 8 – Legal remedies

Each Party shall adopt such legislative and other measures as may be necessary to ensure that interested parties affected by measures under Articles 3, 4 and 5 and such other provisions in this Section as are relevant, shall have effective legal remedies in order to preserve their rights.

Article 9 – Laundering offences

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:
 - a the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;
 - b the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds;

and, subject to its constitutional principles and the basic concepts of its legal system;

 - c the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;
 - d participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.
- 2 For the purposes of implementing or applying paragraph 1 of this article:
 - a it shall not matter whether the predicate offence was subject to the criminal jurisdiction of the Party;
 - b it may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;
 - c knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective, factual circumstances.
- 3 Each Party may adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this Article, in either or both of the following cases where the offender
 - a suspected that the property was proceeds,
 - b ought to have assumed that the property was proceeds.
- 4 Provided that paragraph 1 of this article applies to the categories of predicate offences in the

appendix to the Convention, each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies:

- a only in so far as the predicate offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year, or for those Parties that have a minimum threshold for offences in their legal system, in so far as the offence is punishable by deprivation of liberty or a detention order for a minimum of more than six months; and/or
 - b only to a list of specified predicate offences; and/or
 - c to a category of serious offences in the national law of the Party.
- 5 Each Party shall ensure that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for money laundering.
 - 6 Each Party shall ensure that a conviction for money laundering under this Article is possible where it is proved that the property, the object of paragraph 1.a or b of this article, originated from a predicate offence, without it being necessary to establish precisely which offence.
 - 7 Each Party shall ensure that predicate offences for money laundering extend to conduct that occurred in another State, which constitutes an offence in that State, and which would have constituted a predicate offence had it occurred domestically. Each Party may provide that the only prerequisite is that the conduct would have constituted a predicate offence had it occurred domestically.

Article 10 – Corporate liability

- 1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
 - a a power of representation of the legal person; or
 - b an authority to take decisions on behalf of the legal person; or
 - c an authority to exercise control within the legal person,
 as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.
- 2 Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.
- 3 Liability of a legal person under this Article shall not exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to, the criminal offences mentioned in paragraph 1.
- 4 Each Party shall ensure that legal persons held liable in accordance with this Article, shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 11 – Previous decisions

Each Party shall adopt such legislative and other measures as may be necessary to provide for the possibility of taking into account, when determining the penalty, final decisions against a natural or legal person taken in another Party in relation to offences established in accordance with this

Convention.

Section 2 - Financial intelligence unit (FIU) and prevention

Article 12 – Financial intelligence unit (FIU)

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish an FIU as defined in this Convention.
- 2 Each Party shall adopt such legislative and other measures as may be necessary to ensure that its FIU has access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of suspicious transaction reports.

Article 13 – Measures to prevent money laundering

- 1 Each Party shall adopt such legislative and other measures as may be necessary to institute a comprehensive domestic regulatory and supervisory or monitoring regime to prevent money laundering and shall take due account of applicable international standards, including in particular the recommendations adopted by the Financial Action Task Force on Money Laundering (FATF).
- 2 In that respect, each Party shall adopt, in particular, such legislative and other measures as may be necessary to:
 - a require legal and natural persons which engage in activities which are particularly likely to be used for money laundering purposes, and as far as these activities are concerned, to:
 - i identify and verify the identity of their customers and, where applicable, their ultimate beneficial owners, and to conduct ongoing due diligence on the business relationship, while taking into account a risk based approach;
 - ii report suspicions on money laundering subject to safeguard;
 - iii take supporting measures, such as record keeping on customer identification and transactions, training of personnel and the establishment of internal policies and procedures, and if appropriate, adapted to their size and nature of business;
 - b prohibit, as appropriate, the persons referred to in sub-paragraph a from disclosing the fact that a suspicious transaction report or related information has been transmitted or that a money laundering investigation is being or may be carried out;
 - c ensure that the persons referred to in sub-paragraph a are subject to effective systems for monitoring, and where applicable supervision, with a view to ensure their compliance with the requirements to combat money laundering, where appropriate on a risk sensitive basis.
- 3 In that respect, each Party shall adopt such legislative or other measures as may be necessary to detect the significant physical cross border transportation of cash and appropriate bearer negotiable instruments.

Article 14 – Postponement of domestic suspicious transactions

Each Party shall adopt such legislative and other measures as may be necessary to permit urgent action to be taken by the FIU or, as appropriate, by any other competent authorities or body, when there is a suspicion that a transaction is related to money laundering, to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm the suspicion. Each party may restrict such a measure to cases where a suspicious transaction report has been submitted. The maximum duration of any suspension or withholding of consent to a transaction shall be subject to any relevant provisions in national law.

Chapter IV – International co-operation

Section 1 – Principles of international co-operation

Article 15 – General principles and measures for international co-operation

- 1 The Parties shall mutually co-operate with each other to the widest extent possible for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds.
- 2 Each Party shall adopt such legislative or other measures as may be necessary to enable it to comply, under the conditions provided for in this chapter, with requests:
 - a for confiscation of specific items of property representing proceeds or instrumentalities, as well as for confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;
 - b for investigative assistance and provisional measures with a view to either form of confiscation referred to under a above.
- 3 Investigative assistance and provisional measures sought in paragraph 2.b shall be carried out as permitted by and in accordance with the internal law of the requested Party. Where the request concerning one of these measures specifies formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to the fundamental principles of its law.
- 4 Each Party shall adopt such legislative or other measures as may be necessary to ensure that the requests coming from other Parties in order to identify, trace, freeze or seize the proceeds and instrumentalities, receive the same priority as those made in the framework of internal procedures.

Section 2 – Investigative assistance

Article 16 – Obligation to assist

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

Article 17 – Requests for information on bank accounts

- 1 Each Party shall, under the conditions set out in this article, take the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide the particulars of the identified accounts.
- 2 The obligation set out in this article shall apply only to the extent that the information is in the possession of the bank keeping the account.
- 3 In addition to the requirements of Article 37, the requesting party shall, in the request:
 - a state why it considers that the requested information is likely to be of substantial value for the purpose of the criminal investigation into the offence;
 - b state on what grounds it presumes that banks in the requested Party hold the account and specify, to the widest extent possible, which banks and/or accounts may be involved; and
 - c include any additional information available which may facilitate the execution of the request.
- 4 The requested Party may make the execution of such a request dependant on the same conditions as it applies in respect of requests for search and seizure.
- 5 Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that this article applies only to the categories of offences specified in the list contained in the appendix to this Convention.

- 6 Parties may extend this provision to accounts held in non-bank financial institutions. Such extension may be made subject to the principle of reciprocity.

Article 18 – Requests for information on banking transactions

- 1 On request by another Party, the requested Party shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.
- 2 The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank holding the account.
- 3 In addition to the requirements of Article 37, the requesting Party shall in its request indicate why it considers the requested information relevant for the purpose of the criminal investigation into the offence.
- 4 The requested Party may make the execution of such a request dependant on the same conditions as it applies in respect of requests for search and seizure.
- 5 Parties may extend this provision to accounts held in non-bank financial institutions. Such extension may be made subject to the principle of reciprocity.

Article 19 – Requests for the monitoring of banking transactions

- 1 Each Party shall ensure that, at the request of another Party, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Party.
- 2 In addition to the requirements of Article 37, the requesting Party shall in its request indicate why it considers the requested information relevant for the purpose of the criminal investigation into the offence.
- 3 The decision to monitor shall be taken in each individual case by the competent authorities of the requested Party, with due regard for the national law of that Party.
- 4 The practical details regarding the monitoring shall be agreed between the competent authorities of the requesting and requested Parties.
- 5 Parties may extend this provision to accounts held in non-bank financial institutions.

Article 20 – Spontaneous information

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

Section 3 – Provisional measures

Article 21 – Obligation to take provisional measures

- 1 At the request of another Party which has instituted criminal proceedings or proceedings for the purpose of confiscation, a Party shall take the necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request.
- 2 A Party which has received a request for confiscation pursuant to Article 23 shall, if so requested, take the measures mentioned in paragraph 1 of this article in respect of any property which is the subject of the request or which might be such as to satisfy the request.

Article 22 – Execution of provisional measures

- 1 After the execution of the provisional measures requested in conformity with paragraph 1 of Article 21, the requesting Party shall provide spontaneously and as soon as possible to the requested Party all information which may question or modify the extent of these measures. The requesting Party shall also provide without delays all complementary information requested by the requested Party and which is necessary for the implementation of and the follow up to the provisional measures.
- 2 Before lifting any provisional measure taken pursuant to this article, the requested Party shall, wherever possible, give the requesting Party an opportunity to present its reasons in favour of continuing the measure.

Section 4 – Confiscation

Article 23 – Obligation to confiscate

- 1 A Party, which has received a request made by another Party for confiscation concerning instrumentalities or proceeds, situated in its territory, shall:
 - a enforce a confiscation order made by a court of a requesting Party in relation to such instrumentalities or proceeds; or
 - b submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it.
- 2 For the purposes of applying paragraph 1.b of this article, any Party shall whenever necessary have competence to institute confiscation proceedings under its own law.
- 3 The provisions of paragraph 1 of this article shall also apply to confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds, if property on which the confiscation can be enforced is located in the requested Party. In such cases, when enforcing confiscation pursuant to paragraph 1, the requested Party shall, if payment is not obtained, realise the claim on any property available for that purpose.
- 4 If a request for confiscation concerns a specific item of property, the Parties may agree that the requested Party may enforce the confiscation in the form of a requirement to pay a sum of money corresponding to the value of the property.
- 5 The Parties shall co-operate to the widest extent possible under their domestic law with those Parties which request the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of this Convention.

Article 24 – Execution of confiscation

- 1 The procedures for obtaining and enforcing the confiscation under Article 23 shall be governed by the law of the requested Party.
- 2 The requested Party shall be bound by the findings as to the facts in so far as they are stated in a conviction or judicial decision of the requesting Party or in so far as such conviction or judicial decision is implicitly based on them.
- 3 Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 2 of this article applies only subject to its constitutional principles and the basic concepts of its legal system.
- 4 If the confiscation consists in the requirement to pay a sum of money, the competent authority of the requested Party shall convert the amount thereof into the currency of that Party at the rate of exchange ruling at the time when the decision to enforce the confiscation is taken.
- 5 In the case of Article 23, paragraph 1.a, the requesting Party alone shall have the right to decide on any application for review of the confiscation order.

Article 25 – Confiscated property

- 1 Property confiscated by a Party pursuant to Articles 23 and 24 of this Convention, shall be disposed of by that Party in accordance with its domestic law and administrative procedures.
- 2 When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated property to the requesting Party so that it can give compensation to the victims of the crime or return such property to their legitimate owners.
- 3 When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such property, in accordance with its domestic law or administrative procedures.

Article 26 – Right of enforcement and maximum amount of confiscation

- 1 A request for confiscation made under Articles 23 and 24 does not affect the right of the requesting Party to enforce itself the confiscation order.
- 2 Nothing in this Convention shall be so interpreted as to permit the total value of the confiscation to exceed the amount of the sum of money specified in the confiscation order. If a Party finds that this might occur, the Parties concerned shall enter into consultations to avoid such an effect.

Article 27 – Imprisonment in default

The requested Party shall not impose imprisonment in default or any other measure restricting the liberty of a person as a result of a request under Article 23, if the requesting Party has so specified in the request.

Section 5 – Refusal and postponement of co-operation

Article 28 – Grounds for refusal

- 1 Co-operation under this chapter may be refused if:
 - a the action sought would be contrary to the fundamental principles of the legal system of the requested Party; or
 - b the execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of the requested Party; or
 - c in the opinion of the requested Party, the importance of the case to which the request relates does not justify the taking of the action sought; or
 - d the offence to which the request relates is a fiscal offence, with the exception of the financing of terrorism;
 - e the offence to which the request relates is a political offence, with the exception of the financing of terrorism; or
 - f the requested Party considers that compliance with the action sought would be contrary to the principle of *ne bis in idem*; or
 - g the offence to which the request relates would not be an offence under the law of the requested Party if committed within its jurisdiction. However, this ground for refusal applies to co-operation under Section 2 only in so far as the assistance sought involves coercive action. Where dual criminality is required for co-operation under this chapter, that requirement shall be deemed to be satisfied regardless of whether both Parties place the offence within the same category of offences or denominate the offence by the same terminology, provided that both Parties criminalise the conduct underlying the offence.
- 2 Co-operation under Section 2, in so far as the assistance sought involves coercive action, and under

Section 3 of this chapter, may also be refused if the measures sought could not be taken under the domestic law of the requested Party for the purposes of investigations or proceedings, had it been a similar domestic case.

- 3 Where the law of the requested Party so requires, co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter may also be refused if the measures sought or any other measures having similar effects would not be permitted under the law of the requesting Party, or, as regards the competent authorities of the requesting Party, if the request is not authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.
- 4 Co-operation under Section 4 of this chapter may also be refused if:
 - a under the law of the requested Party confiscation is not provided for in respect of the type of offence to which the request relates; or
 - b without prejudice to the obligation pursuant to Article 23, paragraph 3, it would be contrary to the principles of the domestic law of the requested Party concerning the limits of confiscation in respect of the relationship between an offence and:
 - i an economic advantage that might be qualified as its proceeds; or
 - ii property that might be qualified as its instrumentalities; or
 - c under the law of the requested Party confiscation may no longer be imposed or enforced because of the lapse of time; or
 - d without prejudice to Article 23, paragraph 5, the request does not relate to a previous conviction, or a decision of a judicial nature or a statement in such a decision that an offence or several offences have been committed, on the basis of which the confiscation has been ordered or is sought; or
 - e confiscation is either not enforceable in the requesting Party, or it is still subject to ordinary means of appeal; or
 - f the request relates to a confiscation order resulting from a decision rendered in absentia of the person against whom the order was issued and, in the opinion of the requested Party, the proceedings conducted by the requesting Party leading to such decision did not satisfy the minimum rights of defence recognised as due to everyone against whom a criminal charge is made.
- 5 For the purpose of paragraph 4.f of this article a decision is not considered to have been rendered *in absentia* if:
 - a it has been confirmed or pronounced after opposition by the person concerned; or
 - b it has been rendered on appeal, provided that the appeal was lodged by the person concerned.
- 6 When considering, for the purposes of paragraph 4.f of this article if the minimum rights of defence have been satisfied, the requested Party shall take into account the fact that the person concerned has deliberately sought to evade justice or the fact that that person, having had the possibility of lodging a legal remedy against the decision made *in absentia*, elected not to do so. The same will apply when the person concerned, having been duly served with the summons to appear, elected not to do so nor to ask for adjournment.
- 7 A Party shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for co-operation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.
- 8 Without prejudice to the ground for refusal provided for in paragraph 1.a of this article:
 - a the fact that the person under investigation or subjected to a confiscation order by the authorities

of the requesting Party is a legal person shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter;

- b the fact that the natural person against whom an order of confiscation of proceeds has been issued has died or the fact that a legal person against whom an order of confiscation of proceeds has been issued has subsequently been dissolved shall not be invoked as an obstacle to render assistance in accordance with Article 23, paragraph 1.a.
- c the fact that the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is mentioned in the request both as the author of the underlying criminal offence and of the offence of money laundering, in accordance with Article 9.2.b of this Convention, shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter.

Article 29 – Postponement

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

Article 30 – Partial or conditional granting of a request

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

Section 6 – Notification and protection of third parties' rights

Article 31 – Notification of documents

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

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

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

Article 32 – Recognition of foreign decisions

- 1 When dealing with a request for co-operation under Sections 3 and 4, the requested Party shall recognise any judicial decision taken in the requesting Party regarding rights claimed by third parties.
- 2 Recognition may be refused if:
 - a third parties did not have adequate opportunity to assert their rights; or
 - b the decision is incompatible with a decision already taken in the requested Party on the same matter; or
 - c it is incompatible with the ordre public of the requested Party; or
 - d the decision was taken contrary to provisions on exclusive jurisdiction provided for by the law of

the requested Party.

Section 7 – Procedural and other general rules

Article 33 – Central authority

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

Article 34 – Direct communication

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

Article 35 – Form of request and languages

- 1 All requests under this chapter shall be made in writing. They may be transmitted electronically, or by any other means of telecommunication, provided that the requesting Party is prepared, upon request, to produce at any time a written record of such communication and the original. However each Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, indicate the conditions in which it is ready to accept and execute requests received electronically or by any other means of communication.
- 2 Subject to the provisions of paragraph 3 of this article, translations of the requests or supporting documents shall not be required.
- 3 At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, any State or the European Community may communicate to the Secretary General of the Council of Europe a declaration that it reserves the right to require that requests made to it and documents supporting such requests be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language as it may specify. The other Parties may apply the reciprocity rule.

Article 36 – Legalisation

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

Article 37 – Content of request

- 1 Any request for co-operation under this chapter shall specify:
 - a the authority making the request and the authority carrying out the investigations or proceedings;
 - b the object of and the reason for the request;
 - c the matters, including the relevant facts (such as date, place and circumstances of the offence) to which the investigations or proceedings relate, except in the case of a request for notification;
 - d in so far as the co-operation involves coercive action:
 - i the text of the statutory provisions or, where this is not possible, a statement of the relevant law applicable; and
 - ii an indication that the measure sought or any other measures having similar effects could be taken in the territory of the requesting Party under its own law;
 - e where necessary and in so far as possible:
 - i details of the person or persons concerned, including name, date and place of birth, nationality and location, and, in the case of a legal person, its seat; and
 - ii the property in relation to which co-operation is sought, its location, its connection with the person or persons concerned, any connection with the offence, as well as any available information about other persons, interests in the property; and
 - f any particular procedure the requesting Party wishes to be followed.
- 2 A request for provisional measures under Section 3 in relation to seizure of property on which a confiscation order consisting in the requirement to pay a sum of money may be realised shall also indicate a maximum amount for which recovery is sought in that property.
- 3 In addition to the indications mentioned in paragraph 1, any request under Section 4 shall contain:
 - a in the case of Article 23, paragraph 1.a:
 - i a certified true copy of the confiscation order made by the court in the requesting Party and a statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself;
 - ii an attestation by the competent authority of the requesting Party that the confiscation order is enforceable and not subject to ordinary means of appeal;
 - iii information as to the extent to which the enforcement of the order is requested; and
 - iv information as to the necessity of taking any provisional measures;
 - b in the case of Article 23, paragraph 1.b, a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;
 - c when third parties have had the opportunity to claim rights, documents demonstrating that this has been the case.

Article 38 – Defective requests

- 1 If a request does not comply with the provisions of this chapter or the information supplied is not sufficient to enable the requested Party to deal with the request, that Party may ask the requesting Party to amend the request or to complete it with additional information.
- 2 The requested Party may set a time-limit for the receipt of such amendments or information.

- 3 Pending receipt of the requested amendments or information in relation to a request under Section 4 of this chapter, the requested Party may take any of the measures referred to in Sections 2 or 3 of this chapter.

Article 39 – Plurality of requests

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

Article 40 – Obligation to give reasons

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

Article 41 – Information

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

Article 42 – Restriction of use

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

Article 43 – Confidentiality

- 1 The requesting Party may require that the requested Party keep confidential the facts and substance

of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

- 2 The requesting Party shall, if not contrary to basic principles of its national law and if so requested, keep confidential any evidence and information provided by the requested Party, except to the extent that its disclosure is necessary for the investigations or proceedings described in the request.
- 3 Subject to the provisions of its domestic law, a Party which has received spontaneous information under Article 20 shall comply with any requirement of confidentiality as required by the Party which supplies the information. If the other Party cannot comply with such requirement, it shall promptly inform the transmitting Party.

Article 44 – Costs

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

Article 45 – Damages

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

Chapter V – Co-operation between FIUs

Article 46 – Co-operation between FIUs

- 1 Parties shall ensure that FIUs, as defined in this Convention, shall cooperate for the purpose of combating money laundering, to assemble and analyse, or, if appropriate, investigate within the FIU relevant information on any fact which might be an indication of money laundering in accordance with their national powers.
- 2 For the purposes of paragraph 1, each Party shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Convention or in accordance with existing or future memoranda of understanding compatible with this Convention, any accessible information that may be relevant to the processing or analysis of information or, if appropriate, to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved.
- 3 Each Party shall ensure that the performance of the functions of the FIUs under this article shall not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities.
- 4 Each request made under this article shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. The FIU shall specify in the request how the information sought will be used.
- 5 When a request is made in accordance with this article, the requested FIU shall provide all relevant information, including accessible financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between the Parties.
- 6 An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Party or, in exceptional circumstances, where divulging the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Party concerned or would otherwise not be in accordance with fundamental principles of national law of the requested Party. Any such refusal shall be appropriately explained to the FIU requesting the information.

- 7 Information or documents obtained under this article shall only be used for the purposes laid down in paragraph 1. Information supplied by a counterpart FIU shall not be disseminated to a third party, nor be used by the receiving FIU for purposes other than analysis, without prior consent of the supplying FIU.
- 8 When transmitting information or documents pursuant to this article, the transmitting FIU may impose restrictions and conditions on the use of information for purposes other than those stipulated in paragraph 7. The receiving FIU shall comply with any such restrictions and conditions.
- 9 Where a Party wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in paragraph 7, the transmitting FIU may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in paragraph 6. Any refusal to grant consent shall be appropriately explained.
- 10 FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this article is not accessible by any other authorities, agencies or departments.
- 11 The information submitted shall be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and taking account of Recommendation No R(87)15 of 15 September 1987 of the Committee of Ministers of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU.
- 12 The transmitting FIU may make reasonable enquiries as to the use made of information provided and the receiving FIU shall, whenever practicable, provide such feedback.
- 13 Parties shall indicate the unit which is an FIU within the meaning of this article.

Article 47 – International co-operation for postponement of suspicious transactions

- 1 Each Party shall adopt such legislative or other measures as may be necessary to permit urgent action to be initiated by a FIU, at the request of a foreign FIU, to suspend or withhold consent to a transaction going ahead for such periods and depending on the same conditions as apply in its domestic law in respect of the postponement of transactions.
- 2 The action referred to in paragraph 1 shall be taken where the requested FIU is satisfied, upon justification by the requesting FIU, that:
 - a the transaction is related to money laundering; and
 - b the transaction would have been suspended, or consent to the transaction going ahead would have been withheld, if the transaction had been the subject of a domestic suspicious transaction report.

Chapter VI – Monitoring mechanism and settlement of disputes

Article 48 – Monitoring mechanism and settlement of disputes

- 1 The Conference of the Parties (COP) shall be responsible for following the implementation of the Convention. The COP:
 - a shall monitor the proper implementation of the Convention by the Parties;
 - b shall, at the request of a Party, express an opinion on any question concerning the interpretation and application of the Convention.
- 2 The COP shall carry out the functions under paragraph 1.a above by using any available Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (Moneyval) public summaries (for Moneyval countries) and any available FATF public summaries (for FATF countries), supplemented by periodic self assessment questionnaires, as appropriate. The monitoring procedure

will deal with areas covered by this Convention only in respect of those areas which are not covered by other relevant international standards on which mutual evaluations are carried out by the FATF and Moneyval.

- 3 If the COP concludes that it requires further information in the discharge of its functions, it shall liaise with the Party concerned, taking advantage, if so required by the COP, of the procedure and mechanism of Moneyval. The Party concerned shall then report back to the COP. The COP shall on this basis decide whether or not to carry out a more in-depth assessment of the position of the Party concerned. This may, but need not necessarily, involve, a country visit by an evaluation team.
- 4 In case of a dispute between Parties as to the interpretation or application of the Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the COP, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.
- 5 The COP shall adopt its own rules of procedure.
- 6 The Secretary General of the Council of Europe shall convene the COP not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the COP shall be held in accordance with the rules of procedure adopted by the COP.

Chapter VII – Final Provisions

Article 49 – Signature and entry into force

- 1 The Convention shall be open for signature by the member States of the Council of Europe, the European Community and non-member States which have participated in its elaboration. Such States or the European Community may express their consent to be bound by:
 - a signature without reservation as to ratification, acceptance or approval; or
 - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 6 signatories, of which at least four are member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
- 4 In respect of any Signatory which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Convention in accordance with the provisions of paragraph 1.
- 5 No Party to the 1990 Convention may ratify, accept or approve this Convention without considering itself bound by at least the provisions corresponding to the provisions of the 1990 Convention to which it is bound.
- 6 As from its entry into force, Parties to this Convention, which are at the same time Parties to the 1990 Convention:
 - a shall apply the provisions of this Convention in their mutual relationships;
 - b shall continue to apply the provisions of the 1990 Convention in their relations with other Parties to the said Convention, but not to the present Convention.

Article 50 – Accession to the Convention

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

Article 51 – Territorial application

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

Article 52 – Relationship to other conventions and agreements

- 1 This Convention does not affect the rights and undertakings of Parties derived from international multilateral instruments concerning special matters.
- 2 The Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for the purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
- 3 If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate these relations accordingly, in lieu of the Convention, if it facilitates international co-operation.
- 4 Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.

Article 53 – Declarations and reservations

- 1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more of the declaration provided for in Article 3, paragraph 2, Article 9, paragraph 4, Article 17, paragraph 5, Article 24, paragraph 3, Article 31, paragraph 2, Article 35, paragraphs 1 and 3 and Article 42, paragraph 2.
- 2 Any State or the European Community may also, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General, reserve its right not to apply, in part or in whole, the provisions of Article 7, paragraph 2, sub-paragraph c; Article 9, paragraph 6; Article 46, paragraph 5; and Article 47.
- 3 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare the manner in which it intends to apply Articles 17 and 19 of this Convention, particularly taking into account applicable international agreements in the field of international co-operation in criminal matters. It shall notify any changes in this information to the Secretary General of the Council of Europe.

- 4 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare:
 - a that it will not apply Article 3, paragraph 4 of this Convention; or
 - b that it will apply Article 3, paragraph 4 of this Convention only partly; or
 - c the manner in which it intends to apply Article 3, paragraph 4 of this Convention.

It shall notify any changes in this information to the Secretary General of the Council of Europe.

- 5 No other reservation may be made.
- 6 Any Party which has made a reservation under this article may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.
- 7 A Party which has made a reservation in respect of a provision of the Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article 54 – Amendments

- 1 Amendments to the Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe, to the European Community and to every non-member State which has acceded to or has been invited to accede to this Convention in accordance with the provisions of Article 50.
- 2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC) which shall submit to the Committee of Ministers its opinion on that proposed amendment.
- 3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDPC and may adopt the amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe.
- 4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
- 5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.
- 6 In order to update the categories of offences contained in the appendix, as well as amend Article 13, amendments may be proposed by any Party or by the Committee of Ministers. They shall be communicated by the Secretary General of the Council of Europe to the Parties.
- 7 After having consulted the Parties which are not members of the Council of Europe and, if necessary the CDPC, the Committee of Ministers may adopt an amendment proposed in accordance with paragraph 6 by the majority provided for in Article 20.d of the Statute of the Council of Europe. The amendment shall enter into force following the expiry of a period of one year after the date on which it has been forwarded to the Parties. During this period, any Party may notify the Secretary General of any objection to the entry into force of the amendment in its respect.
- 8 If one-third of the Parties notifies the Secretary General of an objection to the entry into force of the amendment, the amendment shall not enter into force.
- 9 If less than one-third of the Parties notifies an objection, the amendment shall enter into force for those Parties which have not notified an objection.
- 10 Once an amendment has entered into force in accordance with paragraphs 6 to 9 of this article and a Party has notified an objection to it, this amendment shall come into force in respect of the Party concerned on the first day of the month following the date on which it has notified the Secretary

General of the Council of Europe of its acceptance. A Party which has made an objection may withdraw it at any time by notifying it to the Secretary General of the Council of Europe.

- 11 If an amendment has been adopted by the Committee of Ministers, a State or the European Community may not express their consent to be bound by the Convention, without accepting at the same time the amendment.

Article 55 – Denunciation

- 1 Any Party may, at any time, denounce the Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.
- 3 The present Convention shall, however, continue to apply to the enforcement under Article 23 of confiscation for which a request has been made in conformity with the provisions of the Convention before the date on which such a denunciation takes effect.

Article 56 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the European Community, the non-member States which have participated in the elaboration of the Convention, any State invited to accede to it and any other Party to the Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of the Convention in accordance with Articles 49 and 50;
- d any declaration or reservation made under Article 53;
- e any other act, notification or communication relating to the Convention.

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

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

Appendix

- a participation in an organised criminal group and racketeering;
- b terrorism, including financing of terrorism;
- c trafficking in human beings and migrant smuggling;
- d sexual exploitation, including sexual exploitation of children;
- e illicit trafficking in narcotic drugs and psychotropic substances;
- f illicit arms trafficking;
- g illicit trafficking in stolen and other goods;
- h corruption and bribery;
- i fraud;
- j counterfeiting currency;
- k counterfeiting and piracy of products;
- l environmental crime;
- m murder, grievous bodily injury;
- n kidnapping, illegal restraint and hostage-taking;
- o robbery or theft;
- p smuggling;
- q extortion;
- r forgery;
- s piracy; and
- t insider trading and market manipulation.

Treaty open for signature by the member States, the non-member States which have participated in its elaboration and by the European Community, and for accession by other non-member States

Entry into force

Conditions: 6 Ratifications including 4 Member States.
Date : //

Status as of: 19/8/2005[illegible]

Poland	16/5/2005										
Portugal	16/5/2005										
Romania	16/5/2005										
Russia											
San Marino											
Serbia and Montenegro	16/5/2005										
Slovakia											
Slovenia											
Spain											
Sweden	16/5/2005										
Switzerland											
the former Yugoslav Republic of Macedonia											
Turkey											
Ukraine											
United Kingdom											

Non-member States of the Council of Europe

States	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Canada										
Holy See										
Japan										
Mexico										
United States										

International Organisations

Organisations	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
European Community										

Total number of signatures not followed by ratifications:	13
Total number of ratifications/accessions:	

Notes: 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>

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)*

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

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

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);

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;

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;

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);

Taking into account the European Convention on Nationality (ETS No. 166);

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;

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

Bearing in mind the work of the International Civil Aviation Organisation (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;

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);

Acknowledging that the overwhelming majority of persons applying for or using identity and travel documents do so for lawful purposes;

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 on 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 cooperation

11. Member states are encouraged to cooperate 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.

Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice

(Adopted by the Committee of Ministers on 20 April 2005 at the 924th 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 to Recommendation Rec(2005)9

1. Definitions

For the purposes of this Recommendation, the term:

- "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 cooperate 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 cooperate 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 cooperation/contact with or between law-enforcement agencies should be ensured in order to successfully adopt and implement protection measures and programmes.

IV. International cooperation

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 cooperation between the authorities responsible for protection programmes.

30. Measures aimed at fostering international cooperation 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 cooperation 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 cooperate 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 cooperation with international criminal courts.

Recommendation Rec(2005)10 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 20 April 2005
at the 924th 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 cooperation 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 cooperation 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 cooperation 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 to Recommendation Rec(2005)10

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 coordination

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 cooperation

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

15. Member states are encouraged to sign, to ratify and to implement existing conventions or instruments in the field of international cooperation 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 Organised 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 Organisation (Interpol) and the International Criminal Court, with a view to exchanging experience, further improving international cooperation 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.

Guidelines on the Protection of Victims of Terrorist Acts

*(Adopted by the Committee of Ministers on 2 March 2005
at the 917th meeting of the Ministers' Deputies)*

Preamble

The Committee of Ministers,

- a. Considering that terrorism seriously jeopardises human rights, threatens democracy, aims notably to destabilise legitimately constituted governments and to undermine pluralistic civil society and challenges the ideals of everyone to live free from fear;
- b. Unequivocally condemning all acts of terrorism as criminal and unjustifiable, wherever and by whomever committed;
- c. Recognising the suffering endured by the victims of terrorist acts and their close family and considering that these persons must be shown national and international solidarity and support;
- d. Recognising in that respect the important role of associations for the protection of victims of terrorist acts;
- e. Reaffirming the Guidelines on Human Rights and the Fight against Terrorism, adopted on 11 July 2002 at the 804th meeting of the Ministers' Deputies, as a permanent and universal reference;
- f. Underlining in particular the states' obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life;
- g. Recalling also that all measures taken by states to fight terrorism must respect human rights and the principle of the rule of law, while excluding any form of arbitrariness, as well as any discriminatory or racist treatment, and must be subject to appropriate supervision;
- h. Considering that the present Guidelines aim at addressing the needs and concerns of the victims of terrorist acts in identifying the means to be implemented to help them and to protect their fundamental rights while excluding any form of arbitrariness, as well as any discriminatory or racist treatment;
- i. Considering that the present Guidelines should not, under any circumstances, be construed as restricting in any way the Guidelines of 11 July 2002.

Adopts the following Guidelines and invites member states to implement them and ensure that they are widely disseminated among all authorities responsible for the fight against terrorism and for the protection of the victims of terrorist acts, as well as among representatives of civil society.

I. Principles

1. States should ensure that any person who has suffered direct physical or psychological harm as a result of a terrorist act as well as, in appropriate circumstances, their close family can benefit from the services and measures prescribed by these Guidelines. These persons are considered victims for the purposes of these Guidelines.
2. The granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act.
3. States must respect the dignity, private and family life of victims of terrorist acts in their treatment.

II. Emergency assistance

In order to cover the immediate needs of the victims, states should ensure that appropriate (medical, psychological, social and material) emergency assistance is available free of charge to victims of terrorist acts; they should also facilitate access to spiritual assistance for victims at their request.

III. Continuing assistance

1. States should provide for appropriate continuing medical, psychological, social and material assistance for victims of terrorist acts.
2. If the victim does not normally reside on the territory of the state where the terrorist act occurred, that state should cooperate with the state of residence in ensuring that the victim receives such assistance.

IV. Investigation and prosecution

1. Where there have been victims of terrorist acts, states must launch an effective official investigation into those acts.
2. In this framework, special attention must be paid to victims without it being necessary for them to have made a formal complaint.
3. In cases where, as a result of an investigation, it is decided not to take action to prosecute a suspected perpetrator of a terrorist act, states should allow victims to ask for this decision to be re-examined by a competent authority.

V. Effective access to the law and to justice

States should provide effective access to the law and to justice for victims of terrorist acts by providing:

- (i) the right of access to competent courts in order to bring a civil action in support of their rights, and
- (ii) legal aid in appropriate cases.

VI. Administration of justice

1. States should, in accordance with their national legislation, strive to bring individuals suspected of terrorist acts to justice and obtain a decision from a competent tribunal within a reasonable time.
2. States should ensure that the position of victims of terrorist acts is adequately recognised in criminal proceedings.

VII. Compensation

1. Victims of terrorist acts should receive fair, appropriate and timely compensation for the damages which they suffered. When compensation is not available from other sources, in particular through the confiscation of the property of the perpetrators, organisers and sponsors of terrorist acts, the state on the territory of which the terrorist act happened must contribute to the compensation of victims for direct physical or psychological harm, irrespective of their nationality.
2. Compensation should be easily accessible to victims, irrespective of nationality. To this end, the state on the territory of which the terrorist act happened should introduce a mechanism allowing for a fair and appropriate compensation, after a simple procedure and within a reasonable time.
3. States whose nationals were victims of a terrorist act on the territory of another state should also encourage administrative cooperation with the competent authorities of that state to facilitate access to compensation for their nationals.
4. Apart from the payment of pecuniary compensation, states are encouraged to consider, depending on the circumstances, taking other measures to mitigate the negative effects of the terrorist act suffered by the victims.

VIII. Protection of the private and family life of victims of terrorist acts

1. States should take appropriate steps to avoid as far as possible undermining respect for the private and family life of victims of terrorist acts, in particular when carrying out investigations or providing assistance after the terrorist act as well as within the framework of proceedings initiated by victims.
2. States should, where appropriate, in full compliance with the principle of freedom of expression, encourage the media and journalists to adopt self-regulatory measures in order to ensure the protection of the private and family life of victims of terrorist acts in the framework of their information activities.
3. States must ensure that victims of terrorist acts have an effective remedy where they raise an arguable claim that their right to respect for their private and family life has been violated.

IX. Protection of the dignity and security of victims of terrorist acts

1. At all stages of the proceedings, victims of terrorist acts should be treated in a manner which gives due consideration to their personal situation, their rights and their dignity.
2. States must ensure the protection and security of victims of terrorist acts and should take measures, where appropriate, to protect their identity, in particular where they intervene as witnesses.

X. Information for victims of terrorist acts

States should give information, in an appropriate way, to victims of terrorist acts about the act of which they suffered, except where victims indicate that they do not wish to receive such information. For this purpose, states should:

- (i) set up appropriate information contact points for the 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;
- (ii) ensure the provision to the victims of appropriate information in particular about the investigations, the final decision concerning prosecution, the date and place of the hearings and the conditions under which they may acquaint themselves with the decisions handed down.

XI. Specific training for persons responsible for assisting victims of terrorist acts

States should encourage specific training for persons responsible for assisting victims of terrorist acts, as well as granting the necessary resources to that effect.

XII. Increased protection

Nothing in these Guidelines restrains states from adopting more favourable services and measures than described in these Guidelines.