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Explanatory Report to the Additional Protocol to the Criminal Law Convention on Corruption *

Strasbourg, 15.V.2003

The text of this Explanatory Report does not constitute an instrument providing an authoritative interpretation of the Protocol, although it might be of such a nature as to facilitate the application of the provisions contained therein. This Protocol was opened for signature in Strasbourg, on 15 May 2003, on the occasion of the 112th Session of the Committee of Ministers of the Council of Europe.

Introduction

1. At its 103rd Session (November 1998), the Committee of Ministers adopted the Criminal Law Convention on Corruption, decided to open it for signature on 27 January 1999 and authorised the publication of the Explanatory Report thereto. This Convention aims at harmonising national legislation regarding the criminalisation of corruption offences, promoting the adoption of complementary criminal law measures and improving international co-operation in the investigation and prosecution of these offences. According to the text of the Convention, the Contracting Parties undertake to criminalise active and passive bribery of national, foreign and international public officials, of members of national, international and supranational parliaments and assemblies, of national, foreign and international judges. It also provides for the criminalisation of active and passive corruption in the private sector, trading in influence, laundering of corruption proceeds. In addition, the Convention deals with accounting offences and other substantial or procedural issues, such as jurisdiction, sanctions and measures, liability of legal persons, setting up of specialised authorities, co-operation among national authorities, witness protection. Besides, the Convention introduced a set of rules in order to conciliate the respect for existing treaties or arrangements on international co-operation in criminal matters with the need to establish a specific legal basis for co-operating in the fight against corruption, in particular in cases where other treaties or arrangements do not apply. The Convention is a complex and ambitious document, which provides for the criminalisation of a broad range of corruption offences.

2. The Group of States against Corruption (GRECO) is responsible for monitoring the implementation of the Convention.

3. Following the adoption by the Committee of Ministers of the Criminal Law Convention on Corruption, a significant part of the objectives defined by the Council of Europe's Programme of Action against Corruption (PAC) in the criminal law field were reached. However, the Convention did not deal with all criminal law matters covered by the PAC. It should also be underlined that during the elaboration of this Convention, the GMC agreed to postpone consideration of the criminalisation at international level of some other offences related to corruption.

(*) The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community entered into force on 1 December 2009. As a consequence, as from that date, any reference to the European Community shall be read as the European Union.

4. Therefore the working group on criminal law (GMCP) discussed during several meetings about the necessity of criminalising at international level other forms of corrupt behaviour or behaviour that could be assimilated to corruption, namely:

– illegal acquisitions of interest
– insider trading
– "la concussion" (extortion by a public official)
– illicit enrichment
– corruption of members of non-governmental organisations
– corruption of sport referees
– buying and selling of votes

5. The GMCP also discussed certain aspects of criminal procedure and international co-operation, which could possibly be the subject of new international standards, such as:

– confiscation of proceeds of crime, possibly entailing shifting the burden of proof;

– extension of the material scope of the offence dealt with in article 13 of the Criminal law Convention criminalising the laundering of money originating from corruption offences;

– enforcement of foreign legal decisions of confiscation of proceeds of crime;

– measures of ensuring the integrity of investigation;

– the duration of limitation periods for offences covered by the Convention.

6. While recognising the importance of most of these issues for the fight against corruption, the discussion showed that some of them were of a general nature and that some others could be covered by already existing provisions in the Convention or by national law. The GMCP felt that it would be preferable to postpone consideration of additional standards in this area, work which could be undertaken in the future in the light of the GRECO evaluations. The GMCP decided, therefore, to interrupt for the time being the work on the above listed issues.

7. On the other hand, the GMCP agreed, as a result of the debate to draft an additional Protocol to the Criminal law Convention on corruption providing for the criminalisation of corruption in the field of arbitration. For reasons spelled out later, the GMCP further decided to extend the scope of the draft Protocol to cover corruption committed by or against jurors as well.

Commentary on the articles of the Protocol

CHAPTER I – USE OF TERMS

Article 1 – Use of terms

8. Only three terms are defined under Article 1, as all other notions are addressed at the appropriate place in the Explanatory report or have been already used in the Criminal Law Convention on Corruption.

9. The term "arbitrator" is used in Articles 2 to 4. Paragraph 1 of Article 1 defines the concept of "arbitrator" in two ways: on the one hand it refers to the respective national laws – as does the Criminal Law Convention on Corruption concerning the term "public official" (cf. Article 1 *littera* a of the Convention: *"... shall be understood by reference to the definition ... in the national law of the State ...");* on the other hand – and contrary to the Convention – it establishes an autonomous definition insofar as it sets a commonly binding minimum

standard. In reference to the "national law" it should be noted – as has been done with respect to the Criminal Law Convention on Corruption – that it was the intention of the drafters of the Protocol, too, that Contracting Parties assume obligations under this Protocol only to the extent consistent with their Constitution and the fundamental principles of their legal system. This means in particular that no provision of this Protocol should be understood in a way that Parties to this Protocol should feel obliged to establish a system of arbitration (or lay justice) along the lines of the given definition (or any such system; notwithstanding the fact that during the negotiations better protection against corrupt behaviour by means of this Protocol has been mentioned as a supportive factor for promoting plans to introduce such a system) or even to change an already existing system by adjusting it to the Protocol's scope.

10. However, States Parties to this Protocol will be obliged to provide for criminal responsibility in the field of arbitration for offences as foreseen under Articles 2 to 4 committed – at least – by persons who by virtue of an arbitration agreement are called upon to render a legally binding decision in a dispute submitted to them by the parties to the agreement.

11. What is meant by "arbitration agreement" is defined in paragraph 2 of Article 1 (for the purpose of giving further explanation to the notion of arbitrator in paragraph 1 since the term "arbitration agreement" is not used elsewhere in the Protocol). Like the definition of arbitrator the definition of arbitration agreement also uses a very broad concept: for the purposes of this Protocol arbitration agreement means any agreement recognised by the national law whereby the parties agree to submit a dispute for a decision by an arbitrator.

12. This broad concept, in fact, could turn what might look like a "minimum standard" in the sense of a small common denominator into something like a general clause. Speaking in terms of criminalisation, this would mean that the obligation stemming from this Protocol would also be a broad one. There is, for example, no restriction to the field of legal relationships to which the definition may be applied. In particular it should be pointed out, that the scope of this Protocol is not limited to commercial arbitration. Consequently, the concept of "arbitration agreement" should be understood in a broad way in order to reflect the reality and variety of civil, commercial and other relations, and not be limited to the formal expression of commitments based on reciprocal obligations.

13. Although the drafters of this Protocol intended to keep the text as flexible as possible they considered it to be helpful to give some indications in the Explanatory report about typical aspects of arbitration and insofar focussing on commercial arbitration: in the view of the drafters commercial arbitration is an extra judiciary form of solving disputes which could arise during the implementation of a commercial agreement; the arbitrators are appointed on the basis of a common decision by the parties to a transaction and the parties being bound by the arbitration decision; an arbitration agreement (preliminary or subsequent to the dispute) should exist between the parties; the arbitrators could be chosen by the parties or be part of an arbitration tribunal; according to the agreement or applicable rules, the decision could be definitive or could be subject of appeal; the arbitrators apply the substantive applicable law to the dispute and are subject to procedural rules defined beforehand; the arbitrators should be independent while exercising their functions.

14. Some of these elements have gone into the text of the Protocol, while others have been deemed sufficiently highlighted by mentioning them in the Explanatory report. Summing up in this respect it can be pointed out that the arbitration agreement could be concluded preliminary or subsequent to the dispute, that the arbitrators can be acting individually or in the framework of an arbitration tribunal and that the fact that arbitrators are called upon to render a legally *binding* decision would not mean that there must not be any judicial remedy against it at all.

15. This potentially broad concept, however, again is subject to compatibility with national law (on arbitration), since the arbitration agreements must be "recognised by the national law". Therefore, a Party to this Protocol that, for example, knows only commercial arbitration in its national law (i.e. its national law would only recognise arbitration agreements in commercial relationships) would not be obliged to criminalise corruption in other (possible) fields of arbitration.

16. As concerns the definition of "juror", paragraph 3 of Article 1 also refers to the national law of the Parties to this Protocol. Therefore, the same principles apply as mentioned above with respect to arbitrators. Concerning the term juror, however, there is a fixed, really autonomous minimum standard (contrary to the Convention) by simply stating which kind of persons it shall include "in any case" without any further dependence on national law. This means that the criminalisation of the bribery of "lay persons acting as members of a collegial body which has the responsibility of deciding on the guilt of an accused person in the framework of a trial" is obligatory, no matter what national law says about jurors in general. Therefore, Parties to this Protocol, whose national law knows a broader concept of juror than that (by including, for example, civil law matters) would be obliged to criminalise corruption of jurors in this broader sense. On the other hand, Parties, whose national law would not include lay persons in the sense of paragraph 3 of Article 1 or would not know the concept of jurors at all, would have to adjust their criminal law accordingly in order to fulfil the obligations stemming from this Protocol. (Further adjustments of the legal system concerning the use of jurors etc. as such would, of course, not be necessary.)

17. With respect to foreign arbitrators or jurors paragraph 4 of Article 1 makes use of the same technique as the Criminal Law Convention on Corruption does with respect to foreign public officials (cf. Article 1 littera c of the Convention). It means that the definition of arbitrator or juror in the law of the other (foreign) State is not necessarily conclusive where the person concerned would not have had the status of arbitrator or juror under the law of the prosecuting State. This follows from paragraph 4 of Article 1, according to which a State may determine that corruption offences involving a foreign arbitrator or juror refer only to such officials whose status is compatible with that of arbitrator or juror under the national law of the prosecuting State.

CHAPTER II – MEASURES TO BE TAKEN AT NATIONAL LEVEL

Article 2 – Active bribery of domestic arbitrators

18. During the final stages of the negotiations of the Convention the question was raised, how to deal with possible corruption of arbitrators. There was agreement that arbitrators should be covered – on the one hand because of the importance of their tasks, not seldom involving decisions with considerable pecuniary or other economic consequences, but not to a lesser degree also because of the similarity of their tasks with those of judges and, generally speaking, for matters of completeness. The opinion, however, about whether or not arbitrators were already covered by the Convention (and if, by which Article) was split: whereas some delegations found it compatible with their national law to treat them as judges (what would make them fall under Articles 2, 3, 5 and 11 of the Convention) and others referred to Articles 7 and 8 of the Convention (private sector corruption), there was also the opinion that they might not be covered by any of the Convention's provisions. After all it was decided to postpone the discussions on this issue until after the finalisation of the Convention; the results of those discussions are reflected in the present Protocol.

19. Article 2 defines the elements of the active bribery of domestic arbitrators following the text of Article 2 of the Criminal Law Convention on Corruption ("Active Bribery of domestic public officials"). Therefore, the corresponding explanatory remarks are applicable here, too. The offence of active bribery, in current criminal law theory and practice and in the view of the drafters of this Protocol, too, is mirrored by passive bribery, though they are considered to be separate offences for which prosecutions can be brought independently. It emerges that the two types of bribery are, in general, two sides of the same phenomenon, one perpetrator offering, promising or giving the advantage and the other perpetrator accepting the offer,

promise or gift. Usually, however, the two perpetrators are not punished for complicity in the other one's offence.

20. The definition provided in Article 2 is, through a double reference, referred to in Articles 4, 5 and 6 of this Protocol. These provisions do not repeat the substantive elements but extend the criminalisation of the active bribery to further categories of persons.

21. The offence of active bribery can only be committed intentionally under Article 2 and the intent has to cover all other substantive elements of the offence. Intent must relate to a future result: the arbitrator (or juror) acting or refraining from acting as the briber intends. It is, however, immaterial whether the arbitrator (or juror) actually acted or refrained from acting as intended.

22. The briber can be anyone, whatever his capacity (businessman, public official, private individual etc). If, however, the briber acts for the account or on behalf of a company, corporate liability may also apply in respect of the company in question (cf. Article 8 of this Protocol and Article 18 of the Convention). Nevertheless, the liability of the company does not exclude in any manner criminal proceedings against the natural person (paragraph 3 of Article 18 of the Convention). The bribed person must be an arbitrator (or juror), as defined under Article 1, irrespective of whether the undue advantage is actually for himself or for someone else.

23. The material components of the offence are promising, offering or giving an undue advantage, directly or indirectly for the arbitrator (or juror) himself or for a third party. The three actions of the briber are slightly different. "Promising" may, for example, cover situations where the briber commits himself to give an undue advantage later (in most cases only once the arbitrator (or juror) has performed the act requested by the briber) or where there is an agreement between the briber and the bribe that the briber will give the undue advantage later. "Offering" may cover situations where the briber shows his readiness to give the undue advantage at any moment. Finally, "giving" may cover situations where the briber transfers the undue advantage. The undue advantage need not necessarily be given to the arbitrator (or juror) himself: it can be given also to a third party, such as a relative, an organisation to which the arbitrator (or juror) belongs, the political party of which he or she is a member. When the offer, promise or gift is addressed to a third party, the arbitrator (or juror) must at least have knowledge thereof at some point. Irrespective of whether the recipient or the beneficiary of the undue advantage is the arbitrator (or juror) himself or a third party, the transaction may be performed through intermediaries.

24. The undue advantages given are usually of an economic nature but may also be of a non-material nature. What is important is that the offender (or any other person, for instance a relative) is placed in a better position than he was before the commission of the offence and that he is not entitled to the benefit. Such advantages may consist in, for instance, money, holidays, loans, food and drink, a case handled within a swifter time, better career prospects, etc.

25. What constitutes "undue" advantage will be of central importance in the transposition of the Protocol into national law. "Undue" for the purposes of the protocol – as well as of the Convention - should be interpreted as something that the recipient is not lawfully entitled to accept or receive. For the drafters of the Protocol, too, the adjective "undue" aims at excluding advantages permitted by the law or by administrative rules as well as minimum gifts, gifts of very low value or socially acceptable gifts.

26. Bribery provisions of certain member States of the Council of Europe make some distinctions, as to whether the act, which is solicited, is a part of the arbitrator's (or juror's) duty or whether he or she is going beyond his or her duties. Such an extra-element of 'breach of duty' was, however, not considered to be necessary for the purposes of this Protocol. The drafters of the Protocol considered that the decisive element of the offence was not whether the arbitrator (or juror) had any discretion to act as requested by the briber, but whether he or

she had been offered, given or promised a bribe in order to obtain something from him or her in the exercise of his or her duties. The briber may not even have known whether the arbitrator (or juror) had discretion or not, this element being, for the purpose of this provision, irrelevant. The notion of “breach of duty" adds an element of ambiguity that makes more difficult the prosecution of this offence, by requiring to prove that the arbitrator (or juror) was expected to act against his duties or was expected to exercise his discretion for the benefit of the briber. States that require such an extra-element for bribery would therefore have to ensure that they could implement the definition of bribery under Article 2 of this Protocol (as well as the Convention) without hindering its objective.

Article 3 – Passive bribery of domestic arbitrators

27. Article 3 defines passive bribery of arbitrators, again following the text of the Criminal Law Convention on Corruption (cf. Article 3 therein, “Passive bribery of domestic public officials”). Because of that here, too, the corresponding deliberations of the Explanatory report to the Convention should apply. As the offence of passive bribery is closely linked with active bribery, some comments made thereon, e.g. in respect of the mental element and the undue advantage apply accordingly here as well. The material elements of the perpetrator’s act include requesting or receiving an undue advantage or accepting the offer or the promise thereof.

28. "Requesting" may for example refer to a unilateral act whereby the arbitrator lets another person know, explicitly or implicitly, that he will have to "pay" to have some task-related act done or abstained from. It is immaterial whether the request was actually acted upon, the request itself being the core of the offence. Likewise, it does not matter whether the arbitrator requested the undue advantage for himself or for anyone else.

29. "Receiving" may, for example, mean the actual taking the benefit, whether by the arbitrator himself or by someone else (spouse, colleague, organisation, political party, etc) for himself or for someone else. The latter case supposes at least some kind of acceptance by the arbitrator. Again, intermediaries can be involved: the fact that an intermediary is involved, which would extend the scope of passive bribery to include indirect action by the arbitrator, necessarily entails identifying the criminal nature of the arbitrator’s conduct, irrespective of the good or bad faith of the intermediary involved.

30. If there is a unilateral request or a corrupt pact, it is essential that the act or the omission of acting by the arbitrator takes place after the request or the pact, whereas it is immaterial in such a case at what point in time the undue advantage is actually received. Thus, it is not a criminal offence under this Protocol to receive a benefit after the act has been performed by the arbitrator, without prior offer, request or acceptance. Moreover, the word "receipt" means keeping the advantage or gift at least for some time so that the arbitrator who, having not requested it, immediately returns the gift to the sender or turns it over to the competent authorities would not be committing an offence under Article 3. This provision is not applicable either to benefits unrelated to a specific subsequent act in the exercise of the arbitrator’s functions.

Article 4 – Bribery of foreign arbitrators

31. This article obliges Parties to the Protocol to criminalise active and passive bribery of foreign arbitrators. Apart from the persons who are bribed, i.e. foreign arbitrators, the substance of this bribery offence is identical to the ones defined under Articles 2 and 3. Again it can only be repeated what has been explained in the commentary to the Convention as the motivation for expanding the scope of the core bribery offences as laid down in the Convention to acts involving foreign public officials:

32. “Corruption not only undermines good governance and destroys public trust in the fairness and impartiality of public administrations but it may also seriously distort competition and endanger economic development [....]. With the globalisation of economic and financial structures and the integration of domestic markets into the world-market, decisions taken on capital movements or investments in one country may and do exert effects in others. Multinational corporations and international investors play a determining role in nowadays economy and know of no borders. It is both in their interest and the interest of the global economy in general to keep competition rules fair and transparent.” [(1)].

33. The decisive element for qualifying an offence as a case of bribery of a foreign arbitrator is not the nationality of the arbitrator or the parties involved, but that the arbitrator exercises his or her functions under the national law on arbitration of a State other than the prosecuting State. There is no specific definition for the term “foreign arbitrator” in this Protocol. Therefore, the general definition given in paragraphs 1 and 2 of Article 1 applies also to foreign arbitrators. In addition, paragraph 4 of Article 1 may be applied in cases where the definition of arbitrator under the law of the prosecuting State differs from the definition provided by the law under which the arbitrator exercises his or her functions.

34. After having discussed the issue of international arbitration the drafters of this Protocol have decided not to include a separate Article on the bribery of international arbitrators (that – according to some preliminary drafts of this Protocol - would have covered cases involving any person acting as arbitrator “under the competence of an international organisation to which the Party is member”). Therefore, a case of bribery in international arbitration where the arbitrator’s exercising of his or her functions cannot be attributed to any national law (be it – from the point of view of the prosecuting State – domestic or foreign) would not fall under the scope of this Protocol. This would concern mainly public international arbitration. Insofar as there may be any practical relevance at all, the potential for loopholes in this field, however, has been deemed justifiable, in particular since the Criminal Law Convention on Corruption itself might be considered applicable in some cases. (If, for example, an arbitrator acts in his capacity as official of an international organisation, Article 9 of the Convention could apply.)

Article 5 – Bribery of domestic jurors

35. This article extends the scope of the active and passive bribery offences defined in Articles 2 and 3 (thereby following Articles 2 and 3 of the Criminal Law Convention on Corruption) to jurors. The definition of the term juror is given in paragraph 3 of Article 1, using the technique of referring to national law while setting up an autonomous minimum-standard at the same time. Aside from the common understanding of the term juror this minimum-standard (i.e. the inclusion of lay persons acting as members of a collegial body which has the responsibility of deciding on the guilt of an accused person in the framework of a trial) clearly indicates that jurors are fulfilling tasks in the judiciary. The question raised during the negotiations of this Protocol whether this task would not qualify jurors to be covered by the notion of judge/holder of judicial office in the sense of Article 1 littera a and b of the Criminal Law Convention on Corruption – which would mean that bribery of such persons (then being considered public officials) was already covered by Articles 2 and 3 of the Convention – has not been answered in the affirmative by all delegations. Although the Explanatory report to the Convention is of the opinion that the notion of judge in the sense of holder of judicial office should be interpreted to the widest extent possible (the decisive element being the functions performed by the person, which should be of a judicial nature, rather than his or her official title), it seemed useful in the end to address jurors explicitly in this Protocol. Given the importance of their task on the one hand and the fact that it is honorary (unpaid) on the other hand could make jurors targets for corruption which they should be prevented from to the same extent as professional judges.

(1) Cf. paragraph 47 of the Explanatory Report to the Criminal Law Convention on Corruption.

36. Apart from the persons who are bribed, i.e. domestic jurors, the substance of this bribery offence is identical to the one defined under Articles 2 and 3.

Article 6 – Bribery of foreign jurors

37. This article criminalises the active and passive bribery of foreign jurors. The reasons and the protected legal interests are the same as those described under Article 5, but in a foreign context, "in any other State". It is part of the common effort undertaken by States Parties to ensure respect for judicial and democratic institutions, independently whether they are national or foreign in character. Apart from the persons who are bribed, i.e. foreign jurors, the substance of this bribery offence is identical to the one defined under Articles 2 and 3. There is no specific definition for the term "foreign juror" in this Protocol. Therefore, the general definition given in paragraph 3 of Article 1 applies also to foreign jurors. In addition, paragraph 4 of Article 1 may be applied in cases where the definition of juror under the law of the prosecuting State differs from the definition provided by the law of the State the juror exercises his or her functions for.

CHAPTER III – MONITORING OF IMPLEMENTATION AND FINAL PROVISIONS

Article 7 – Monitoring of implementation

38. As the implementation of the Criminal Law Convention on Corruption itself (cf. Article 24 of the Convention) the implementation of this Protocol will also be monitored by the Group of States against Corruption (GRECO).

39. GRECO was established on the basis of the Council of Europe Resolutions (98) 7 and (99) 5. This monitoring mechanism aims to improve the capacity of its members to fight corruption by following up, through a dynamic process of mutual evaluation and peer pressure (including on-site visits), States' respect of the twenty Guiding Principles for the Fight against Corruption, the Criminal law Convention on Corruption, the Civil law Convention on Corruption, as well as other international instruments adopted by the Council of Europe in application of the Programme of Action against Corruption (such as the present Protocol).

Article 8 – Relationship to the Convention

40. Article 8 defines the relationship between this Protocol and the Criminal Law Convention on Corruption as follows: As between the States parties (of both the Convention and the Protocol) the substantive part of this Protocol (Articles 2 to 6) shall be regarded as additional articles to the Convention (paragraph 1). Paragraph 2 further declares explicitly that the provisions of the Convention shall apply to this Protocol (to the extent that they are compatible with the latter's provisions). Paragraph 2 should be understood as making Articles 12 to 23 of the Convention applicable to this Protocol, as well as Chapter IV and those elements of Chapter V not provided for in the Protocol. This is why it was not necessary to include provisions dealing with issues such as jurisdiction (cf. Article 17 of the Convention), corporate liability (cf. Article 18 of the Convention), sanctions and measures (cf. Article 19 of the Convention) or international co-operation (cf. Chapter IV of the Convention) in this Protocol, too.

Article 9 – Declarations and reservations

41. During the negotiations of this Protocol it has been discussed, whether – in particular with respect to the very specific and therefore rather narrow scope of this Protocol – there was room for possible declarations or reservations at all. The drafters of this Protocol came to the conclusion, that it would be desirable not to provide for additional (new) declaration or reservation possibilities, but to allow only such declarations and reservations that are a consequence of declarations or reservations already made in respect of the Convention. Consequently, paragraph 1 provides for the possibility of a declaration similar to one based on Article 36 of the Convention relating to Articles 4 and 6 of this Protocol (i.e. the bribery of

foreign arbitrators and jurors) only if the respective Contracting State has already made such a declaration with respect to the Convention (i.e. a declaration that foreign or international corruption in the sense of Articles 5, 9 or 11 of the Convention would be criminalised only to the extent that the public official or judge acts or refrains from acting in breach of his or her duties). Likewise, sentence 1 of paragraph 2 allows a reservation similar to a reservation based on Article 37 paragraph 1 restricting the application of the passive bribery offences concerning foreign arbitrators (cf. Article 4 of this Protocol) or jurors (cf. Article 6 of this Protocol) only if a Party has already made such a reservation with relation to the passive bribery of foreign public officials according to Article 5 of the Convention. In such a case, and considering that both reservations are similar, the reservation made to the Protocol would not be counted under Article 37 paragraph 4 of the Convention (which limits to five the maximum number of reservations to the Convention). According to sentence 2 of paragraph 2 other reservations based on Article 37 (concerning Articles 12 [trading in influence], 17 [jurisdiction - cf. Art. 37 par. 2] and 26 [refusal of mutual assistance on the grounds of political offence - cf. Art. 37 par. 3]) of the Convention apply accordingly to this Protocol. According to paragraph 3 no other reservation may be made.

Articles 10 to 14 – (Signature and entry into force – Accession to the Protocol – Territorial application – Denunciation – Notification)

42. The final clauses have been drafted along the lines of already existing provisions, notably in the Convention itself as well as in other Council of Europe additional Protocols such as the Additional Protocols to the European Conventions on Extradition (ETS 86 and 98), on Mutual Assistance in Criminal Matters (ETS 99) and on the Transfer of Sentenced Persons (ETS 167).

43. Since the Protocol may not enter into force before the Convention has done so, and since a signatory State may not ratify this Protocol without having, simultaneously or previously ratified the Convention, it was possible to fix the number of ratifications necessary for the entry into force of this Protocol (5) considerably lower than that of the Convention itself (14) (Article 10 of this Protocol).