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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
(PC-OC)

**DRAFT THIRD ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON MUTUAL
ASSISTANCE IN CRIMINAL MATTERS**

Document prepared by the Secretariat

Second Additional Protocol, Article 4 – Channels of communication

Article 15 of the Convention shall be replaced by the following provisions:

1. Requests for mutual assistance, as well as spontaneous information, shall be addressed in writing by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels. However, they may be forwarded directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party and returned through the same channels.
2. Applications as referred to in Article 11 of this Convention and Article 13 of the Second Additional Protocol to this Convention shall in all cases be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.
3. Requests for mutual assistance concerning proceedings as mentioned in paragraph 3 of Article 1 of this Convention may also be forwarded directly by the administrative or judicial authorities of the requesting Party to the administrative or judicial authorities of the requested Party, as the case may be, and returned through the same channels.
4. Requests for mutual assistance made under Articles 18 and 19 of the Second Additional Protocol to this Convention may also be forwarded directly by the competent authorities of the requesting Party to the competent authorities of the requested Party.
5. Requests provided for in paragraph 1 of Article 13 of this Convention may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 of this Convention shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.
6. Requests for mutual assistance and any other communications under the Convention and its Protocols, including those signed electronically, shall be forwarded by using electronic means, under conditions which allow the Parties to ascertain their authenticity. However, other means which provide evidence in writing may be used.
7. The Parties shall, upon request ~~and at any time~~, submit the originals or copies of documents.
- 6-8. Requests for copies of convictions and measures as referred to in Article 4 of the Additional Protocol to the Convention may be made directly to the competent authorities. Any Contracting State may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of this paragraph, deem competent authorities.
- 8-9. In urgent cases, where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).
- 9-10. Any Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, reserve the right to make the execution of requests, or specified requests, for mutual assistance dependent on one or more of the following conditions:
 - a. that a copy of the request be forwarded to the central authority designated in that declaration;
 - b. that requests, except urgent requests, be forwarded to the central authority designated in that declaration;
 - c. that, in case of direct transmission for reasons of urgency, a copy shall be transmitted at the same time to its Ministry of Justice;
 - d. that some or all requests for assistance shall be sent to it through channels other than those provided for in this article.¹

¹ Article 21 of the Convention needs to be adjusted in accordance with the final version of the amendments.

~~11. Requests for mutual assistance and any other communications under this Convention or its Protocols may be forwarded through any electronic or other means of telecommunication provided that the requesting Party is prepared, upon request, to produce at any time a written record of it and the original. However, a Contracting State may by a declaration addressed at any time to the Secretary General of the Council of Europe, establish the conditions under which it shall be willing to accept and execute requests received by electronic or other means of telecommunication.~~

~~10-12.~~ The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Parties which provide for the direct transmission of requests for assistance between their respective authorities.

Second Additional Protocol, Article 9 – Hearing by video conference

1. If a person is in one Party's territory and has to be heard as a witness or expert by the judicial authorities of another Party, the latter may, ~~where it is not desirable or possible for the person to be heard to appear in its territory in person,~~ request that the hearing take place by video conference, as provided for in paragraphs 2 to 7.
2. The requested Party shall agree to the hearing by video conference provided that the use of the video conference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested Party has no access to the technical means for video conferencing, such means may be made available to it by the requesting Party by mutual agreement.
3. Requests for a hearing by video conference shall contain, in addition to the information referred to in Article 14 of the Convention, ~~the reason why it is not desirable or possible for the witness or expert to attend in person,~~ the name of the judicial authority and of the persons who will be conducting the hearing.
4. The judicial authority of the requested Party shall summon the person concerned to appear in accordance with the forms laid down by its law.
5. With reference to hearing by video conference, the following rules shall apply:
 - a. a judicial authority of the requested Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Party. If the judicial authority of the requested Party is of the view that during the hearing the fundamental principles of the law of the requested Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;
 - b. measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Parties;
 - c. the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Party in accordance with its own laws;
 - d. at the request of the requesting Party or the person to be heard, the requested Party shall ensure that the person to be heard is assisted by an interpreter, if necessary;
 - e. the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Party.
6. Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Party shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Party to the competent authority of the requesting Party.

7. Each Party shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory, in accordance with this article, and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.
8. Parties may at their discretion also apply the provisions of this article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving the accused person or the suspect. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Parties concerned, in accordance with their national law and relevant international instruments. Hearings involving the accused person or the suspect shall only be carried out with his or her consent.
9. Any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it will not avail itself of the possibility provided in paragraph 8 above of also applying the provisions of this article to hearings by video conference involving the accused person or the suspect.
10. This Article is without prejudice to any agreement or arrangement in force or that may be entered into between Contracting Parties allowing hearing by videoconference to be undertaken by other means.²

Second Additional Protocol, Article 25 – Confidentiality

The ~~requesting Party may require that the~~ requested Party shall keep ~~confidential~~ the fact and substance of the request confidential, except to the extent necessary to execute the request or where the requesting Party specifies that confidentiality is not required. The requested Party shall promptly inform the requesting Party in cases where confidentiality cannot be ensured. f the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

New provision, *Ne bis in idem*³

Mutual assistance may be refused on the ground that the person in respect of whom the assistance is requested and who is subject to criminal investigations, prosecutions or other proceedings, including judicial proceedings, in the requesting State, has been finally judged [by another State]⁴ in respect of the same acts, provided that, if a penalty has been imposed, it has been enforced, is in the process of being enforced or can no longer be enforced under the law of the sentencing State.

² Preliminary proposal by one delegation. The delegation clarified during the 33rd meeting of the PC-OC Mod (28 February-2 March 2023) that the purpose of this provision would be to allow the requested state to dispense with the obligation to ensure the presence of its judicial authorities in hearings by video conference, in cases where the witness or expert consents and which do not raise particular issues regarding the protection of their rights, with a view to unburdening courts in such cases. The PC-OC Mod considered that this proposal merited further discussion in the PC-OC plenary.

³ Wording inspired by the [Trade and Cooperation Agreement between the United Kingdom and the European Union](#).

⁴ In the 83rd meeting of the PC-OC, the majority of delegations were in favour of restricting this provision to cases where the requested State is the sentencing State.

New provision, Use of technical recording devices in the territory of another Party⁵

1. Where a Party uses devices intended to record positions, sound or images, or similar recording devices, to collect data on a person or object, and where such recording devices enter the territory of another Party, such recording devices may remain active upon authorization by that Party.
2. To the extent possible, the Party into whose territory the technical recording devices enter shall receive prior notice.
3. Where prior notice is not possible, the Party using the technical recording devices shall, as soon as it becomes aware of their actual or past activity in the territory of the other Party, notify it accordingly.
4. The requested Party shall immediately indicate whether the technical recording devices may remain active or whether it validates their past activity. It may impose conditions, including submitting the continuation or the validation of their activity in its territory to the submission of a formal request for mutual assistance.
5. Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to authorize the continuation, or to validate the past activity, of technical recording devices of another Party operating in its territory.

New provision, Coordination of prosecutions⁶

1. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention or its protocols, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution of the offenders.
2. Following consultation, the Parties may decide to proceed according to article 21 of the Convention or to any other similar mechanism to enable the prosecuting Party to ensure consistent and effective prosecution of the offenders.

⁵ Proposal by Switzerland, with the explanation: "Recording devices (GPS, audio, etc.) are effective tools in the fight against the most serious forms of cross-border crime. However, as the Swiss jurisprudence and the work of Eurojust reveal, the use of GPS or sound recording devices on European territory comes up against regulations that are at best scattered, at worst non-existent, but in any case unsuitable. Particularly in smaller States, it is not always foreseeable if and when a device installed by competent authorities in one State will leave that State's territory. However, non-compliance with these various regulations can lead to the suppression of central evidence. The proposed normative framework provides minimum common rules. Finally, as in several States, there is no procedure for dealing with this type of requests; par. 5, directly inspired by art. 8 par. 2 CETS No. 224, aims to reduce this uncertainty."

⁶ Proposal by Switzerland, with the explanation: "One of the greatest challenges today is the spread of complex criminal phenomena over several jurisdictions. Coordination is needed. The obligation for each jurisdiction to prosecute the same offence separately can prove to be a costly and inefficient method to deal with this type of crime, and entails significant risks (inextricable mutual legal assistance procedures, mutual blockages, forum shopping, contradictory judgments...). Faced with a coordinated criminal phenomenon, States must also be able to act in a coordinated manner. This proposal is taken from article 22 par. 5 CCC."

The decision to concentrate all or part of the prosecution in the hands of a single State is only effective if it can be rapidly implemented, e.g. by means of a the mechanism of art. 21 of the Convention."

New provision, Time limit for the execution of requests for mutual assistance⁷

1. Requests for mutual assistance are to be executed with the same celerity and priority as for a comparable domestic case, and at the latest within the time limits provided in this article.
2. Requests for mutual assistance are to be executed promptly and, without prejudice to paragraphs 3 and 4, no later than 180 days after receipt of the request.
3. If the requesting Party has indicated that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter time limit than that provided in paragraph 2 is necessary, this will be taken into account by the requested Party to the extent possible.
4. If, in a specific case, the requested Party is unable to comply with the time limits pursuant to paragraph 2 or 3, it shall inform the competent judicial authority of the requesting Party without delay by any means, indicating the estimated time required for a decision to be reached. In such cases, the time limits pursuant to paragraph 2 or 3 should not be exceeded by more than 90 days.

⁷ Proposal by Germany, with the explanation: "With a view to increasing the effectiveness of and above all expediting mutual assistance under the European Convention on Mutual Assistance in Criminal Matters (1959), time limits are to be introduced for the execution of mutual assistance requests. Delays constitute a major impediment to cross-border crime fighting that can be effectively countered with the proposed introduction of time limits for execution. However, the proposed rules also give due consideration to the fact that in special cases, such as those involving deprivation of liberty, faster execution may be necessary (paragraph 3), while in some exceptional cases, execution within the usual time limits is not possible (paragraph 4). The proposed rules will be of practical relevance primarily to mutual assistance proceedings with and between third countries, given that within the scope of application of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in Criminal Matters, the time limits established therein will take precedence in proceedings between most EU Member States."