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EUROPEAN COMMITTEE ON CRIME PROBLEMS

COMITÉ EUROPÉEN POUR LES PROBLÈMES CRIMINELS

(CDPC)

COMMITTEE OF EXPERTS

ON THE OPERATION OF EUROPEAN CONVENTIONS

ON CO-OPERATION IN CRIMINAL MATTERS

COMITÉ D'EXPERTS

SUR LE FONCTIONNEMENT DES CONVENTIONS EUROPÉENNES SUR LA

COOPÉRATION DANS LE DOMAINE PÉNAL

(PC-OC)

Summary and overview of replies to the

Questionnaire on the application of the Second Additional Protocol to the European
Convention on Mutual Assistance in Criminal Matters (ETS No. 182)

Résumé et vue d'ensemble des réponses au

*Questionnaire sur la mise en œuvre du Deuxième Protocole additionnel à la Convention
sur l'entraide judiciaire en matière pénale*

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Summary

Out of the 38 Parties to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (hereinafter ETS No. 182), 27 Parties replied to the Questionnaire as well as 7 States that are not yet a Party .

Questions to non-Parties to ETS No 182

Question 1: Is ratification being considered?

The replies of the 7 countries non-parties to ETS No.182 indicate that Austria is close to ratifying¹ the Protocol while Azerbaijan, Greece, Iceland, Monaco and Korea are considering doing so. Andorra is not considering ratifying this Protocol for the moment.

Question 2: Experience on issues covered by Articles 16 to 20 of ETS N° 182 on basis of other treaties

Austria and Greece indicate that Service by post (Article 16) is commonly applied among members of the Schengen area without particular problems. Austria furthermore indicated positive experiences with cross-border observations, controlled deliveries, covert investigations and JITS. Greece report that legislation is in place to enable the setting up of JITS although it has not yet had any experience in this regard. Iceland indicated having little experience and Azerbaijan had no experience regarding the application of the issues covered by Articles 16 to 20 of ETS 182.

Questions to Parties to ETS No 182

Question 3: Experience with mutual assistance in proceedings brought by administrative authorities (Article 1§3, ETS No.182)

The majority of the Parties have little or no experience with mutual assistance in proceedings brought by administrative authorities under this provision. Administrative authorities rarely ask for mutual assistance. Bosnia and Herzegovina and Serbia deal with such requests in the same way as with other requests,. Ukraine reports that it has been used in the context of violations of traffic rules (speeding, drunk driving). Poland sometimes had doubts whether the requesting authority had been designated by the State authorities to request MLA.

Question 4: New channels and methods of communication (Article 4, ETS No.182):

The new channels and methods of communication mentioned under Article 4 of ETS No.182 have received a lot of positive feedback (17 countries out of 26). The main benefit outlined is the increased effectiveness and rapidity of the proceedings. However, its application is limited by the reservations of States impeding the direct legal contact as well as by insufficient information on defining the competent judicial authority of the State. Portugal suggests that an “Atlas” would be useful.

¹ Austria ratified on 10/11/2017

Question 5: Requests for assistance including formalities or procedures that are unfamiliar in the requesting jurisdiction, or in that of the requested country (Article 8, ETS No.182)

Replies indicate that there is satisfactory co-operation between Parties when it comes to requests for assistance including formalities or procedures that are unfamiliar in the requested country. Most of the time such requests are complied with, as long as they do not run counter to the legal order of the requested states. Five replies indicated to have limited or no experience with such requests. The United Kingdom experiences difficulties in facilitating requests for witness statements to be taken when the procedure sought by the requesting State requires the defendant to be present and to have the right to cross examine the witness.

Question 6: Hearings of suspects, accused persons, witnesses and experts by video or telephone conferences (Articles 9 and 10 of ETS No.182)

Parties indicate that while there is nearly no experience with telephone conferences, the experience with video conferences is generally positive. However, a number of replies highlight that the organisation of video conferences still faces some practical and technical problems.

Some Parties, such as Croatia, Denmark, Norway, Poland or the United Kingdom issued reservations so as to exclude the possibility of video conferences involving the suspect or the accused person.

Question 7: Spontaneous sharing of information (Article 11, ETS No.182)

According to the replies, and with the exception of Latvia, Serbia, Slovenia and Switzerland, spontaneous exchange of information on the basis of Article 11 of ETS is not frequent at a judicial level. 21 Parties have no or little experience in this regard. Some States indicate that this information is more likely to be channelled on a police level, especially for transborder criminal cases.

Question 8: Application of Article 12, ETS No.182 on restitution

For the vast majority of the Parties, there is hardly any experience with the application of this Article. Those who have had experience mentioned difficulties in identifying the rightful owner and/or in protecting bona fide third parties. The United Kingdom is of the opinion that Article 12 creates an ambiguity between evidence and “articles obtained by criminal means”. The UK tends not to return evidence unless specifically requested to do so.

Question 9: Language of procedural documents and judicial decisions to be served (Article 15, ETS No.182)

With regard to the application of Article 15 of ETS No. 182 on the language of procedural documents and judicial decisions, there is no common pattern in the practices of the Parties.

Where Parties apply direct transmission, the documents are usually sent in a language understood by the addressee of the documents. Poland mentions that in rare cases the language can be a problem due to the poor quality of translations.

For Parties that do not accept direct transmission, the documents and judicial decisions are transmitted through the same channels by which the MLA request had been received (central

authorities) and translations into the language of the requested state are usually included with these requests.

Question 10: Service by post of procedural documents and judicial decisions, directly addressed to persons living in another State Party (Article 16, ETS No.182)

The service by post of procedural documents and judicial decisions has become usual practice in a minority of Parties only (9 replies). There are many reservations to this article and some Parties report that there is legal uncertainty due to the fact that the requesting State does not often obtain acknowledgment of receipt of the documents: most legal documents served by post require the person concerned to respond back in order for the service to be legally valid. This return notification is very rarely received when the service is done by post.

Question 11: Experience with special investigative techniques (Articles 17, 18, 19, ETS No. 182)

Cross-border observations, controlled delivery and covert investigations are not yet common practice among Parties to the Protocol, with the exception of Bosnia and Herzegovina, Romania, Serbia and Slovenia. The existence of multiple reservations to these provisions limits their effective use under this Protocol.

Most special investigative techniques are implemented on the basis of EU/Schengen instruments.

Question 12: Joint Investigation Teams (Article 20, ETS No. 182)

For the nine Parties who established JITs on the basis of Article 20, the experience is very positive. It allows real-time exchange of information and co-ordination and it provides a common strategy to investigate and prosecute. Hence, it contributes to the effectiveness of the criminal proceedings and the tackling of transborder criminality. Switzerland highlights that "JITs require excellent understanding of the role of each party, possibilities and legal limits as well as perfect coordination of criminal investigations. A high level of mutual confidence is required".

17 Parties have never organised a JIT on the basis of ETS No. 182, their reasons include:

- JITs were organised on the basis of the EU Convention on MLA of 2000
- A preference for the conduct of parallel investigations and exchange of evidence by way of Mutual Assistance Requests (Ireland, Israel)
- certain difficulties related to use of evidence collected in another country in domestic proceedings and translation of voluminous documentation.

Question 13: legal or practical obstacles encountered in the application of ETS 182

Four Parties reported legal or practical obstacles related to the application of the Protocol, namely:

The Czech Republic proposes to pay further attention to the practical aspects of using the video conferences in the State Parties to the ETS No. 182, where it is difficult for judicial authorities in the requesting state to identify the proper channels and necessary technical information to be provided, when the MLA request for hearing via video conference is being prepared.

The Slovak Republic mentions the non-existence of contact addresses of judicial authorities as a practical obstacle.

Slovenia notes that there are no safe channels for exchange of documents between judicial authorities of different states, which are of a confidential or secret nature.

Ukraine underlines certain obstacles in applying the provisions of Article 12 (Restitution), namely when deciding the issue of returning the property from crime to the lawful owner, since such actions, in certain cases, cannot be performed without violating the rights of bona fide purchasers of the said property.

Question 14: Consideration of withdrawal of reservations to Articles 16, 17,18,19,20 of ETS No.182

While most Parties are not considering any change to these reservations, the reply by the Slovak Republic indicated that it is currently considering a partial withdrawal and Romania announced the intention to amend the declarations made to Article 17 (4) and Article 18 (4).

Question 15: Comments or proposals related to ETS No.182

The comments received by Germany, Slovak Republic, Sweden and Switzerland note that while for co-operation among EU member States the EU MLA convention takes precedence over the ETS No. 182, the Protocol is useful for co-operation with non EU member States. It is mentioned however that among the non EU-states who ratified ETS No. 182 many issued reservations and declarations.

Résumé

Sur les 38 Parties au Second Protocole Additionnel à la Convention Européenne d'Entraide Judiciaire en Matière Pénale (ci-après STE n° 182), 27 Parties ont répondu au questionnaire ainsi que 7 Etats qui ne sont pas encore Parties.

Questions aux Etats non-Parties à la STE n° 182

Question 1 : La ratification est-elle considérée ?

Les réponses des 7 pays non Parties à la STE n° 182 indiquent que l'Autriche est sur le point de ratifier le Protocole² alors que l'Azerbaïdjan, la Grèce, l'Islande, Monaco et la Corée envisagent de le faire. Andorre n'envisage pas de ratifier ce protocole pour le moment.

Question 2: Expérience concernant l'application des questions régies par les articles 16 à 20 de la STE n° 182 sur la base d'autres traités

L'Autriche et la Grèce indiquent que la remise par voie postale (Article 16) est couramment appliquée parmi les membres de l'espace Schengen sans difficultés particulières. L'Autriche a également indiqué des expériences positives en matière d'observations transfrontalières, de livraisons surveillées, d'enquêtes discrètes et d'équipes communes d'enquête (ECE). La Grèce informe qu'une législation est en place pour permettre la mise en place de l'ECE bien qu'elle n'ait pas encore d'expérience à cet égard. L'Islande dit avoir peu d'expérience et l'Azerbaïdjan aucune en ce qui concerne l'application des points couverts par les articles 16 à 20 de la STE n° 182.

Questions aux Etats Parties à la STE n° 182

Question 3: Expérience en ce qui concerne l'entraide mutuelle relative à une procédure engagée par les autorités administratives (article 153, STE n° 182)

La majorité des Parties ont peu ou pas d'expérience en matière d'assistance mutuelle dans les procédures engagées par les autorités administratives en vertu de cette disposition. Les autorités administratives demandent rarement une assistance mutuelle. La Bosnie et Herzégovine et la Serbie traitent ces demandes de la même manière que d'autres. L'Ukraine indique que cela a déjà été utilisé dans le contexte de violations des règles de la circulation (excès de vitesse, conduite en état d'ébriété). Dans l'expérience de la Pologne, il existe parfois un doute si l'organe requérant est désigné par son État pour demander l'entraide judiciaire.

Question 4: Nouvelles voies et méthodes de communication (article 4, STE n° 182)

Les nouveaux canaux et méthodes de communication mentionnés à l'article 4 de la STE n° 182 ont reçu de nombreux retours positifs (17 pays sur 26). Le principal avantage décrit est l'efficacité et la rapidité accrues des procédures. Cependant, son application est limitée par les réserves des États qui empêchent la possibilité de mettre en place un contact juridique direct, ainsi que par des informations insuffisantes sur la définition de l'autorité judiciaire compétente de l'État. Le Portugal suggère qu'un "Atlas" serait utile.

² L'Autriche a ratifié le 10 novembre 2017.

Question 5: Demandes d'entraide comprenant des formalités ou procédures qui sont inhabituelles dans votre droit ou dans celui de l'Etat requis (article 8, STE n° 182)

Les réponses indiquent qu'il existe une coopération satisfaisante entre les Parties en ce qui concerne les demandes d'assistance, y compris les formalités ou procédures qui ne sont pas familières dans le pays requis. La plupart du temps, ces demandes sont honorées, pour autant qu'elles ne contreviennent pas à l'ordre juridique des États requis. Cinq réponses indiquent avoir peu ou pas d'expérience de telles demandes. Le Royaume Uni indique avoir des difficultés à répondre à des demandes de prendre des déclarations de témoins lorsque la procédure recherchée par l'Etat requérant consiste à permettre à l'accusé d'être présent et de soumettre le témoin à un contre-interrogatoire.

Question 6: Auditions de suspects, d'accusés, de témoins et d'experts par vidéoconférence ou par conférence téléphonique (articles 9 et 10, STE n° 182)

Les parties indiquent que même s'il n'y a presque aucune expérience d'auditions téléphoniques, l'expérience des auditions par vidéoconférence est généralement positive. Cependant, le nombre de réponses souligne que l'organisation de la vidéoconférence est toujours confrontée à des problèmes pratiques et techniques.

Certaines Parties, telles que la Croatie, le Danemark, la Norvège, la Pologne ou le Royaume Uni ont émis des réserves afin d'exclure la possibilité de recourir à des auditions par vidéoconférence impliquant le suspect ou l'accusé.

Question 7: Transmission spontanée d'informations (article 11, STE n° 182)

Au vu des réponses, et à l'exception de la Lettonie, de la Serbie, de la Slovénie et de la Suisse, la transmission spontanée d'informations sur la base de l'article 11 n'est pas fréquente au niveau judiciaire. 21 Parties n'ont pas ou peu d'expérience à cet égard. Certains États indiquent que cet échange d'informations est plus susceptible d'être effectué au niveau de la police, en particulier pour les affaires pénales transfrontalières.

Question 8: Application de l'article 12, STE n° 182 sur la restitution

Pour la grande majorité des Parties, il n'y a guère d'expérience dans l'application de cet article. Ceux qui ont utilisé cet article ont mentionné des difficultés pour identifier le propriétaire légitime et / ou pour protéger les tiers de bonne foi. Le Royaume Uni estime que l'Article 12 crée une ambiguïté entre les éléments de preuve et les « objets obtenus par des moyens illicites » et a tendance à ne pas restituer les preuves, sauf en cas de demande explicite.

Question 9: Langue des actes de procédure et des décisions judiciaires à remettre (article 15, STE n° 182)

En ce qui concerne l'application de l'article 15 de la STE n° 182 sur la langue des actes de procédure et des décisions judiciaires, il n'y a pas de modèle commun dans les pratiques des Parties.

Lorsque les Parties utilisent la transmission directe, les documents sont généralement envoyés dans une langue comprise par le destinataire des documents. La Pologne indique que le langage peut poser un problème dans de rares cas, dû à la mauvaise qualité de la traduction.

Pour les Parties qui n'acceptent pas la transmission directe, les documents et les décisions judiciaires sont transmis par les canaux par lesquels la demande d'entraide judiciaire a été reçue (autorités centrales) et les traductions dans la langue de l'Etat requis sont généralement incluses dans ces demandes.

Question 10: Envoi direct par voie postale d'actes de procédure et de décisions judiciaires à des personnes résidant sur le territoire d'un autre État partie (article 16, STE n° 182)

La remise par voie postale de documents de procédure et de décisions judiciaires est devenue une pratique habituelle dans seulement une minorité de Parties (9 réponses). Il y a beaucoup de réserves à cet article et certaines Parties signalent qu'il y a une insécurité juridique due au fait que l'Etat requérant n'obtient pas souvent l'accusé de réception des documents: la plupart des documents légaux remis par la poste exigent que l'intéressé notifie la réception pour que le service soit juridiquement valide. Cette notification de retour est très rarement reçue lorsque le service est effectué par la poste.

Question 11: Expérience des techniques spéciales d'enquête (articles 17, 18 et 19, STE n° 182)

Les observations transfrontières, les livraisons surveillées et les enquêtes secrètes ne sont pas encore une pratique courante parmi les Parties au Protocole, à l'exception de la Bosnie et Herzégovine, de la Roumanie, de la Serbie et de la Slovaquie. L'existence de multiples réserves à ces dispositions limite leur utilisation effective.

La plupart des techniques spéciales d'enquête sont mises en œuvre sur la base des instruments UE / Schengen.

Question 12: Équipes communes d'enquête (article 20, STE n° 182)

Pour les 9 Parties qui ont établi des ECE sur la base de l'art. 20, l'expérience est très positive. Elles permettent un échange d'informations et une coordination en temps réel, ainsi que la mise en place d'une stratégie commune pour enquêter et poursuivre. Par conséquent, cela contribue à l'efficacité de la procédure pénale et à la lutte contre la criminalité transfrontalière. La Suisse souligne que «les ECE exigent une excellente compréhension du rôle de chaque partie, des possibilités et des limites légales ainsi qu'une coordination parfaite des enquêtes criminelles. Un haut niveau de confiance mutuelle est requis».

17 Parties n'ont jamais organisé une ECE sur la base de la STE n° 182 ; les raisons avancées comprennent:

- Organisation des ECE sur la base de la Convention européenne relative à l'entraide judiciaire en matière pénale de l'Union Européenne de 2000
- Préférence pour la conduite d'enquêtes parallèles et l'échange de preuves au moyen de demandes d'assistance mutuelle (Irlande, Israël)
- Existence de certaines difficultés liées à l'utilisation de preuves recueillies dans un autre pays dans le cadre de procédures internes et à la traduction de documents volumineux.

Question 13: Obstacles juridiques ou pratiques rencontrés dans l'application de la STE n° 182

Quatre Parties ont signalé des obstacles juridiques ou pratiques liés à l'application du Protocole, à savoir:

La République Tchèque propose d'accorder plus d'attention aux aspects pratiques de l'utilisation de la vidéoconférence dans les États Parties à la STE n° 182, où il est difficile pour les autorités judiciaires de l'État requérant d'identifier les canaux appropriés et les informations techniques nécessaires lorsque la demande d'entraide judiciaire par vidéoconférence est préparée.

La République Slovaque mentionne l'absence d'adresses des contacts des autorités judiciaires comme un obstacle pratique.

La Slovénie note qu'il n'existe pas de voies sûres pour l'échange de documents entre les autorités judiciaires des différents États, qui sont de nature confidentielle ou secrète.

L'Ukraine souligne certains obstacles à l'application des dispositions de l'article 12 (Restitution), notamment lorsqu'il s'agit de restituer un bien à des propriétaires légitimes, car, dans certains cas, de tels actes ne peuvent être commis sans violer les droits des acquéreurs de bonne foi de ladite propriété.

Question 14: Examen du retrait des réserves aux articles 16, 17, 18, 19, 20 de la STE n° 182

Alors que la plupart des Parties n'envisagent pas de modifier ces réserves, la République Slovaque indique qu'elle envisage actuellement un retrait partiel et la Roumanie a annoncé son intention de modifier les déclarations faites à l'article 17-4 et à l'article 18-4.

Question 15: Observations ou propositions relatives à la STE n° 182

Les observations reçues de l'Allemagne, de la République Slovaque, de la Suède et de la Suisse indiquent que pour la coopération entre les pays membres de l'UE, la Convention sur l'entraide judiciaire de l'UE a remplacé la STE n°182. Toutefois, le Protocole garde son importance pour la coopération avec les pays non membres de l'UE. Il est souligné cependant que beaucoup d'États non membres de l'UE ayant ratifié la STE n° 182 ont émis des réserves et des déclarations.

Overview of replies

If your country is not a Party to ETS No. 182

- 1. If your country is not a Party to ETS No. 182, is its ratification being considered?
Please explain.**

Is ratification of ETS 182 being considered?	
Andorra	Andorra doesn't consider ratifying for the moment
Austria	The President of the Republic of Austria signed the ratification document on 24 April 2017.
Azerbaijan	The possibility of its ratification is being studied.
Greece	The ratification of the Second Protocol to the MLA Convention 1959 could be considered by our country, since it includes provisions as hearing by video conference/telephone conference that would enhance cooperation with Member-States of the CoE and taking into account that MLA Convention 2000 is not yet ratified by our country.
Iceland	Iceland is not party to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. It is though under consideration to ratify the protocol.
Monaco	Since its accession to the CoE in 2005, Monaco made important efforts to accede to an important number of international conventions. These efforts continue and a study of this instrument aimed at facilitating judicial cooperation in criminal matters is taking place.
Korea	Currently the provisions of ETS No. 182 are under review at relevant departments, and the ratification is being considered as well.

- 2. Could you please share your experiences regarding the application of the issues covered by Articles 16 to 20 of ETS N° 182 on the basis of other bilateral or multilateral instruments or treaties?**

Experience on issues covered by Articles 16 to 20 of ETS N° 182 on basis of other treaties	
Andorra	N/A
Austria	<p>Service by post (Art 16) has become usual practice. No major problems reported.</p> <p>Cross-border observations (Article 17), Controlled delivery (Article 18) and covert investigations (Article 19) are applied on a regular basis. No problems are reported. The determination of the locally competent authority for the permission of a controlled delivery may be difficult under national law as very often the frontier-crossing point is not known in advance.</p> <p>Joint investigation teams (Article 20): Over the last years Austria has been a Party to 18 joint investigation teams. By accession to the ETS No. 182 we expect difficulties encountered in the past when trying to establish a treaty basis for the setting up of a joint investigation team in relation to Non-Member States of the EU to be resolved.</p>
Azerbaijan	Azerbaijan has no experience regarding the application of the issues covered by Articles 16 to 20 of ETS No. 182
Greece	As to Art. 16 of the Second Protocol: Service by post, as provided under art. 16, is

	<p>commonly applied under Schengen Agreement 52 par. 1 between our country and other Member-States of Schengen Area without any particular problems.</p> <p>As to Art. 20 of the Second Protocol: Even though Greece has not ratified yet the Second Protocol of MLA 1959 Convention as well as MLA 2000 including provisions for Joint Investigation Teams, the formation of JITs and relevant procedure is provided under our national law (as regards Eurojust/JITs). Still, no JIT has been set up till now, to share the relevant experience."</p>
Iceland	Iceland has little experience regarding the application of the issues covered by Articles 16 to 20 of ETS No. 182.
Monaco	N/A
Korea	There have been no particular bilateral or multilateral assistance cases that required the consideration of issues covered by Articles 16 to 20 of ETS No. 182. However, our general stance is to "afford the widest measure of mutual assistance," according to Article 1 paragraph 1 of the European Convention in mutual assistance with Parties of the Convention and according to bilateral treaties in mutual assistance with non-Parties, and the possibility of assistance is being reviewed and discussed with requesting states in each individual case.

If your country is a Party to ETS No. 182**3. What has been your experience, as a requesting and requested state, with mutual assistance in proceedings brought by administrative authorities in the scope defined by Article 1 paragraph 3 of ETS No.182?*****Article 1 – Scope***

“3. Mutual assistance may also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Party by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.”

State	Experience	Comments
Bosnia and Herzegovina	Yes	By way of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, the international legal assistance is also provided in procedures launched before administrative authorities of the requesting country in terms of criminal offences punishable by the laws of Bosnia and Herzegovina in the same manner as in all other criminal cases; therefore, there have been no recorded cases of the refusal of the said requests for international legal assistance.
Croatia	Yes	Most of requests issued by the administrative authorities of the requesting state are treated as misdemeanour proceedings in Croatia and misdemeanour law is part of the criminal law in the broader sense in Croatia. We accept them as requests in the framework of misdemeanour proceeding and forward them to the Misdemeanour courts for its execution. The greatest number of requests is related to traffic violation.
Cyprus	No	
Czech Rep	No	Such requests are dealt with on basis of bilateral agreements or EU MLA Convention
Denmark	No	
Finland	No	
France	No	
Germany	Little	As requested State only, to requests from Switzerland, not always based on ETS 182.
Ireland		No answer
Israel	Yes	
Latvia	No	
Lithuania	Little	In practice administrative authorities rarely ask MLA, and if they ask, usually it is to serve in the procedural documents. The competent authorities of the Republic of Lithuania have not sent any MLA in the case of administrative offence.
Moldova	No	National legislation allows to issue MLA requests only in criminal matters
Montenegro	N/A	
Norway	Little	Norway has not had much experience with such requests.
Poland		In our experience we note that there are sometimes doubts

		whether the requesting body has been designated by its State to request MLA. There are also cases where information is missing about appeal procedures. <i>(original reply in French)</i>
Portugal	Little	Very limited, once with Switzerland. <i>(original reply in French)</i>
Romania	No	
Serbia	Yes	Serbian MoJ proceeds with those requests in regular manner, we haven't noticed specific situations for now.
Slovak Rep	Yes	Only in a passive form. Referring to the stated Article of the ETS No.182 the Slovak Republic does carry out requests of foreign authorities relating to public offenses. The legal order of the Slovak Republic does not recognize any violations of legal provisions which are conducted in proceedings by public authorities of the first degree, whose decision may lead to a proceeding before a court dealing with criminal matters. Therefore this Article is not implemented in an active form.
Slovenia	Yes	By administrative authorities: see Declaration by Slovenia in this regard
Sweden	No	Requests that would qualify are made under ETS 30
Switzerland	Little	In practice administrative authorities rarely ask MLA
Turkey	No	This protocol entered into force in November 2016. For this reason, there has not been any experience about this issue yet.
United Kingdom	Little	The UK's domestic legislation allows for proceedings defined by Article 1 paragraph 3 of ETS No.182 brought by administrative authorities. However, the UK has little experience of receiving or sending such requests.
Ukraine	Yes	For instance, such assistance is provided by the GPO of Ukraine at requests of Switzerland, where violations of the Traffic Rules (speeding) are a criminal offence. Although, according to the legislation of Ukraine, such actions constitute an administrative offence. The MoJ of Ukraine has such experience in relations with Portugal where the MLA requests concerning driving a motor vehicle in a state of alcohol intoxication, for which in Ukraine administrative responsibility is envisaged, has been forwarded to and executed by the competent Ukrainian courts.
Israel	Yes	As a requesting state, Israel does not have any notable experience in this regard. As a requested state, Israel has received requests from administrative authorities as defined by Article 1, paragraph 3 of ETS no. 182. These requests are reviewed in relation to local laws and when there is no conflict the assistance is provided with the stipulation that the materials are to be used only in criminal proceedings.

4. Did your country experience any benefit from the new channels and methods of communication mentioned under Article 4 of ETS No.182? Please explain the extent and nature of the benefit.

“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 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.*
- 7. In urgent cases, where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).*
- 8. 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.*

9. 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, any 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. 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."

State	Benefit	Comments
Bosnia and Herzegovina	Yes	The said article of the Protocol greatly facilitated the communication between the authorities in the proceedings of legal assistance provision, and this improved the efficiency of the actions taken by the authorities in the respective proceedings, taking into account that the application of Article 15, Paragraph 1 of the Convention on Mutual Assistance in Criminal Matters is greatly limited for the reason that the authorities of the requesting country, very often, do not know which authority (court or prosecution) of the requested country is competent for the request.
Croatia	No	Republic of Croatia has made a declaration concerning Article 4, paragraph 8, of the Second Additional Protocol, in a way that all the requests and other communications referred to in paragraphs 1 to 6 of Article 4 should be forwarded to the Ministry of Justice. In urgent cases it is possible to use INTERPOL channels. Also, in case of urgency the Ministry will accept requests received by electronic means of communication and forward it to the competent judicial authority, but originals should be submitted subsequently in shortest term.
Cyprus	No	
Czech Rep	Yes	There are practical problems to identify competent judicial authority for direct transmission
Denmark	Yes	Direct communication is a benefit, enhanced by technological advancement
Finland	No	We have not seen a noticeable change to old practices
France	Yes	Unfortunately some Parties do not apply the possibilities foreseen by this provision
Germany	Yes	All parties in Germany welcome the new channels of communication, in particular by phone or electronic means. But there is uncertainty about data protection requirement. Confirmation of receipt required. We made reservation to 4.8b
Ireland	No	In accordance with Article 15, paragraph 8, of the Convention (as substituted by Article 4 of the Second Additional Protocol), the Government of Ireland declares that all incoming requests shall be sent to the Minister for Justice and Equality as the Central Authority
Latvia	Yes	Definitely it is great advantage, because more rapid and efficient exchange of information and documents is possible.

Lithuania	Yes	<p>In accordance with Art. 15 Para 6 of the European Convention on Mutual Legal Assistance in Criminal Matters, as amended by Art. 4 of ETS No. 182, Lithuania has made a declaration that territorial County Prosecutor's Office, the Court of Appeal of Lithuania, district and county courts shall perform the functions provided in Art. 15 of the Convention.</p> <p>In urgent cases the foreign requests can be sent and accepted made by fax or any other electronic terminal equipment provided that the integrity and authenticity of the information transmitted is ensured. Direct communications with foreign partners or issuing authorities for the purposes of MLA requests are used for prior consultations and/or actions coordination, therefore, the efficiency of such communication is very significant and valuable.</p>
Moldova	Yes	MLA requests get faster to the competent authority
Montenegro	Yes	In practice Article 4 of ETS No. 182 was applied, with the judicial authorities pointing out that the application of that article positively influenced the efficiency of treatment.
Norway	Yes	In general, the possibility of direct transmission is important in practice and will make cooperation more effective.
Poland	Yes	Frequent use of new channels of communication. Direct exchange between bodies has a positive effect on efficiency and speed. <i>.(original reply in French)</i>
Portugal	Yes	Surely with Switzerland . For other non EU countries "Atlas" would be useful. <i>(original reply in French)</i>
Romania	Yes	Direct impact on the effectiveness of the criminal proceedings by improving the efficiency and speed of the process (investigation/trial). In terms of the means of communication – fax, and especially email - the extent of the benefit varies from one case to another depending on the declaration or reservations made by the requested state, and on the logistics (equipment and infrastructure) of which the receiving authority (central authority and/or judicial authority) was allocated with.
Serbia	Yes	Given that the procedure of mutual legal assistance is of a formal nature, and consequently can be time consuming, the Serbian judicial authorities, especially prosecution service, benefited the most from the possibilities for direct communication and direct cooperation with foreign judicial authorities. Possibilities offered by paragraph 9 of Article 4 are as well being used by the prosecution service whenever possible pursuant to legal framework, and requests for mutual assistance are forwarded through email and telefax whenever possible, followed by the original sent through the official channels.
Slovak Rep	No	This Article of ETS No.182 is practiced only rarely by the Slovak judicial authorities. The direct legal contact is implemented on the basis of other international bilateral and multilateral treaties. Its practice is mostly obstructed by the reservations of states impeding the direct legal contact as well as insufficient information on defining the competent judicial authority of the State.
Slovenia	Yes	A lot of benefits for criminal and administrative proceedings: fast and efficient

Sweden	Yes	No experience from Prosecution; possibility is welcomed for CA, judicial and administrative authorities
Switzerland	Yes	Very useful, more efficient, in particular in urgent cases
Turkey	No	As it has not been applied yet, it has not experienced any benefit. In addition, the following declarations were made for sub-paragraphs (b) and (c) of Paragraph 8 of Article 4: Except urgent requests, requests shall be forwarded to the central authority designated in that declaration. In case of direct transmission of requests to the judicial authorities for reasons of urgency, a copy shall be transmitted at the same time to the Central Authority.
United Kingdom		It is difficult to determine any benefits as a direct result of the new channels and methods of communication mentioned under Article 4 of ETS No.182. Prior to becoming party to ETS No. 182, the UK has been open to receiving communications from other countries using methods included under Article 4 and very much support judicial authorities being able to send requests directly.
Ukraine	Yes	On average, the term of execution of requests was reduced due to the use of new channels and methods of communication. Ukraine accepts requests received by electronic or facsimile communications. At the same time, the execution materials are sent upon receipt of the original of the request.
Israel		Israel has made a number of reservations to Article 4 of ETS No. 182 with regards to the address of communication. In practice, Israel provides urgent assistance pursuant to requests sent via e-mail in all relevant cases where such assistance can be provided but on the condition set forth in Israel's reservation, i.e., that the requesting party states the reasons for urgency and also transmits the original in the usual manner.

5. Do you have any experience with requests for assistance including formalities or procedures that are unfamiliar in your jurisdiction, or in that of the requested country (Article 8, ETS No.182)? If so, please explain whether the requests were successful or not.

“Article 8 – Procedure

Notwithstanding the provisions of Article 3 of the Convention, where requests specify 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 fundamental principles of its law, unless otherwise provided for in this Protocol.”

State	Experience	Comments
Bosnia and Herzegovina	Limited	In general, such requests are not frequent, but they are nevertheless processed if the takeover of such actions is not opposed to the constitution and basic principles of the domestic laws.
Croatia	Yes	In the kind of cases [information on bank account; surveillance and interception of telephone and IT communications, molecular genetic analysis; see details in the reply] it is important that it is the order/decision issued by the competent judicial authority of the requesting state, with all relevant facts explaining the necessity of imposing this kind of intrusive measure. So it should be a decision issued by the competent judicial authority according to the national law of the requesting state. One of the formalities that is often requested by our judicial authority, acting as requesting authority, is to conduct an examination of a person (defendant, witness) under formalities prescribed by Croatian Criminal Procedure Code (service of the instruction on rights before examination, recording the examination etc.), according to Article 8, ETS No.182. Most of the differences are being resolved; in minor cases requests couldn't be fully executed. For example, as requested state Croatia couldn't fulfil the request to examine the witness in a way to take an oath on the Bible because it would be against our Constitution.
Cyprus	No	
Czech Rep	No	
Denmark	Yes	Very limited n° of cases: no requests were denied
Finland	No	
France	Yes	Particular procedures requested are implemented as long as they do not run counter national rules on “ordre public”
Germany	Yes	Requests received are complied with to the extent possible but there are cases of refusal. Experience with outgoing requests also included few refusals.
Ireland	Yes	It has been the experience of the Central Authority for MLA that certain formalities must be observed in the execution of requests

		from some requesting States for the purpose of ensuring compliance with evidential requirements of their law in respect of documentary evidence i.e. the provision of certified copies of documents and witness statements. Furthermore, some requesting States appear to be unfamiliar with our procedural requirements, in particular, the relevant assurances for each specific request in accordance with our legislation.[See reply for details.] Once clarification is provided in relation to our procedural requirements, a request is processed successfully in most cases.
Latvia	Yes	The Prosecution Office is respecting the requirements of the requesting country and is taking all efforts within the possible limits for fulfilment of the requests, even if some procedures are not usual in our jurisdiction. The fulfilment of the requests is successful, nevertheless it prolongs the time necessary for fulfilment of the requests.
Lithuania	Yes	The Prosecutor's General Office takes into account the requirements of the requesting country and is taking all efforts to follow them, provided the actions requested neither violate the national laws nor are against the fundamental principles of the criminal procedure of Lithuania. Where the Prosecutor General's Office acts as a requested country, for the purpose of conducting intrusive procedural measures (e.g. search, seizure, wiretapping, and etc.) it requests the issuing country to provide with the order/decision issued by the competent judicial institution, proving the necessity of the use of such a measure.
Moldova	No	
Montenegro	Yes	If a request by a foreign judicial authority is sought or is not required by domestic law, the request may be granted if the sovereignty, constitutional order, security or vital interests of Montenegro are not violated.
Norway	Yes	This article is not often applied by Norway, but it is useful when needed. For incoming requests we have had some experiences with requests requiring that certain specific procedures, differing from the ordinary Norwegian procedures, should be applied during photo confrontation.
Poland		Given the decentralisation of exchanges we have no information. <i>.(original reply in French)</i>
Portugal	Yes	Specific formalities requested did not meet any obstacles for execution. <i>(original reply in French)</i>
Romania	Yes	As a requesting state: Having formalities or procedures included in the request depends on whether within our system serving of procedural documents or obtaining specific evidence is subject to formalities or procedures. As a requested state : We have been asked to have the suspect or accused person heard by a judge although the case within the requesting country was within the investigation stage. We have followed the procedure requested by the requesting state although in our system, within the investigation stage, suspect or accused person is always to be heard by the prosecutor (except when subject to the measure of arrest).
Serbia	Yes	Serbian judicial authorities have experience with requests for

		<p>assistance that include formalities or procedures that are not provided by Serbian law and has so far executed such mutual legal assistance request with success. Such requests concerned most often observation of the rules related to hearings under oath, requests to advise the defendant on his rights before the hearing, providing audio or video recording of the person from whom the statement has been taken, or requests to respect of specific formalities related to the keeping of records of hearings or form of the acts to be delivered as part of the execution of the MLA requests.</p> <p>Serbian MLA Law stipulates in Article 90 that mutual assistance shall be provided in a manner foreseen in the legislature of the Requesting party, unless contrary to the basic principles of the legal system of the Republic of Serbia.</p>
Slovak Rep	Yes	<p>While carrying out a request for legal assistance of a foreign judicial authority the Slovak authorities follow the Slovak legal order. The provisions of legal order of a foreign country may be applied directly on the basis of an international treaty if the state does request for it and it is not in conflict with the basic principles of the legal order of the Slovak Republic and the protection of interests of the Slovak Republic.</p> <p>The stated provision is practiced also in the requests of the Slovak authorities. If our request is not accepted by the requested authority, the Slovak judicial authority examines whether the manner of executing the acts is in accordance to the Slovak legal order and in a case contrary we request for its repetition or justification of the procedure from the foreign judicial authority.</p>
Slovenia	Yes	All incoming requests were executed. One outgoing request could not be executed.
Sweden	No	Not in cases concerning this Protocol but such requests are common under EU Convention on MLA
Switzerland	Yes	Incoming requests can usually be executed
Turkey	No	There is not any experience about this issue.
United Kingdom	Yes	<p>The UKCA receives requests for assistance in taking witness statements which include formalities or procedures which are unfamiliar in our jurisdiction. We look to facilitate these requests where this is in accordance with UK law and practice. Witness statements in UK investigations are taken by police officers and not by the judiciary. The statements contain a declaration of truth, signed by the witness which has a criminal penalty if the witness gives false information. We encourage requesting states to accept witness statements taken by UK police officers as these can be obtained with a great deal more ease and speed than arranging a court hearing to take a witness of suspect statement.</p> <p>We encounter difficulties in facilitating requests for witnesses statements to be take when the procedure sought by the requesting state is for the defendant to be present and to have the right to cross examine the witness. This is not a procedure in use in the UK, challenging evidence takes part at the trial stage, not during the investigation. A witness' consent would be needed to</p>

		agree to such a process and there are practical difficulties in facilitating such a request, such as whether this would undermine special measures that are available to victims under UK Criminal Procedure Rules to achieve best evidence and contravene UK commitments to victims under the UK victim's charter.
Ukraine	Yes	Ukraine has experience and it is rather successful. At the request of the requesting party, procedural actions shall be conducted in accordance with the requirements of the legislation of the requesting state. For instance the MoJ of Ukraine on a regular basis receives MLA requests of the Czech Republic according to which the Czech courts ask the Ukrainian party to note that applicable legislation of the Czech Republic requires judicial documents to be served on the person concerned by way of passing the documents into the person's own hands. [...] In such cases the MoJ of Ukraine draws the attention of the Ukrainian courts to the aspects of the Czech law, and consequently the Ukrainian courts during execution of such MLA requests adhere to the requirements.
Israel	Yes	Israel regularly receives requests for assistance from countries that include local procedures and formalities not practiced in Israel. Where these do not contradict local law and/or procedure the requested procedures and formalities are incorporated into the execution of the request. The majority of these requests are executed successfully.

6. What has been your experience in conducting hearings of suspects, accused persons, witnesses and experts by video or telephone conferences (Articles 9 and 10 of ETS No.182) as a requesting state? and in organising them as a requested state?

“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.”*

“Article 10 – Hearing by telephone conference

1. *If a person is in one Party's territory and has to be heard as a witness or expert by judicial authorities of another Party, the latter may, where its national law so provides, request the assistance of the former Party to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 6. “*

State	Experience	Comments
Bosnia and Herzegovina	Video	In relation to the given inquiry, we can inform you that in the previous period we have recorded a significant progress in terms of processing letter rogatories for witness or guilty party hearings via video calls. Namely, a number of courts and prosecution offices have been trained and equipped both materially and technically over the past period for the provision of this type of international legal assistance, a practice we intend to continue in the coming period. At the same time, hearings via telephone calls have not become usual practice.
Croatia	Video	Croatia made declaration that it will not apply the provisions of Article 9§9 to hearings by video conference involving the accused person or the suspect. Hearings of witnesses by video conference are often used and in most of cases successfully conducted. However, problems regarding incompatibility of the equipment and under-capacity sometimes occur.
Cyprus	Limited	No experience as requesting state. As requested state, the conducting of such hearings was satisfactory.
Czech Rep	Video	Only problems encountered were of a technical or linguistic nature.
Denmark	Limited	Reservation on video conference for suspects or accused: no such requests issued. Few requests received were executed, sometimes with technical difficulties.
Finland	Limited	Few requests issued and received to hear witnesses and defendants, all successfully.
France	Video	Central authority involved to address legal issues. Hardly any requests for phone conference.
Germany	Video	Practitioners report positive experiences. Although witnesses and

		experts participate on voluntary basis only, it is often used. Some technical difficulties may arise. Incoming requests need to be made timely and specify if interrogation by prosecutor or judge is required. No experience with phone conference.
Ireland	Video	Video link hearings are arranged in respect of criminal court trials and only in circumstances where it is not desirable or practical for the witness to give evidence in person. In conducting a video link hearing there are certain procedural requirements [See reply for details] On occasion, the Courts encounter technical difficulties in conducting such hearings. A further difficulty is that it is not always evident from requesting States that the testimony is being provided for a trial.
Latvia	Video	We have experience regarding interrogation by means of the video conference and it is positive. Special attention shall be paid to the difference of time in both countries, especially if conference is taking place between different continents. We have no experience with the telephone conference.
Lithuania	Video Limited	The Prosecutor's General Office has rather low experience in conducting hearings under Art. 9 of ETS No. 182 as an executing state. Having assessed the experience of video conference executed based on the provisions of other international instruments, it should be said that it is a rather sophisticated tool in terms of technical and legal coordination. There is no practice in relation to hearing by telephone conference.
Moldova	None	
Montenegro	Video	Courts have technical possibilities for hearing through a video conference link and are complying with the requests of judicial authorities for this type of mutual legal assistance and vice versa. As regards the application of Article 10 ETS No. 182 and the hearing of suspects, accused, witnesses or expert witnesses through a telephone conference call, requests for this type of mutual legal assistance are not common.
Norway	Video	Norway has made a reservation concerning hearing by video conference involving suspects/accused persons, cf article 9 of ETS 182. The general impression is that the use of videoconference works well, but for outgoing requests it may take some time to get the necessary arrangements in place. Many of the requests received by Norway requesting videoconference are forwarded pursuant to the EU legal framework.
Poland	Video	We have a very good experience with videoconferences for the hearing of witnesses and experts. Our law does not foresee hearings by phone nor video hearings of accused or suspects. <i>.(original reply in French)</i>
Portugal	Video	Frequently used, mainly in requests to Switzerland Some connexion problems. <i>(original reply in French)</i>
Romania	Video	As a requested state, hearings of suspects, accused persons, witnesses and experts by video link were smoothly conducted irrespectively whether it was requested during the prosecution or trial stage. As a requesting state, we could rate the overall experience as a

		positive one. However, during the trial stage, we have found difficult to cope with the specific requirements of the requesting state such as given a minimum 8 or 12 weeks of notice prior to the date of the video conferencing hearing. Other practical issues have been related to the information requested by the requested authority to identify and contact the witness. In terms of using video link for the hearing of suspects or accused persons, we have met cases of refusal based on the fact that the requested states declared that it does not accept requests for hearing by videoconference involving the accused person or the suspect.
Serbia		Only one court and one PPO in Serbia (both in Belgrade) are equipped for video or telephone conferences, so it can reflect on our ability to promptly conduct hearings when we are requested state.
Slovak Rep	Video	The Slovak Republic does carry out hearings of persons via a video conference on the basis of a request of a state. No significant problems occurred. No experience with telephone conferences which are not recognised in national law.
Slovenia	Video	Frequently and successfully used, incoming and outgoing requests, including for hearing of suspects and accused.
Sweden	None	No experience in cases concerning this protocol and few in cases under the EU convention, and in older cases under the 1959 convention. We faced technical problems.
Switzerland	Video	Efficient tool for requesting country; heavy to execute for requested country, requiring excellent technical and legal coordination. Superposition of two legal systems may lead to problems. There is legal uncertainty about compatibility of this tool with Swiss law. No practice of phone conferences.
Turkey	Video	The video conference is a method applied within the framework of not only ETS No. 182 but also [...] in our national legislation. As requested country, the requests are executed without any problem because our courts have sufficient technical capacity. As requesting country, it has not encountered any serious problem so far.
United Kingdom	Video	Video and telephone evidence is not available for suspects or defendants under UK law, other than in limited circumstances where the request is made pursuant to Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. We have been working with requesting states to ensure they have the right level of technical hardware to support a connection to UK systems. This is not always the case and we make use of private suppliers to provide technical support where an IT bridge is required. The UK made a declaration on Article 9: In accordance with Article 9, paragraph 9, of the Second Additional Protocol, the Government of the United Kingdom declares that it will not allow video conferencing to be used where the witness in question is the accused person or the suspect.
Ukraine	Video	According to the GPO of Ukraine at the request of foreign

		<p>partners, the competent authorities of Ukraine repeatedly interviewed suspects, the accused, witnesses and experts via video conferences. The MoJ of Ukraine has experience on processing of incoming and outgoing MLA requests on interrogation of persons by means of videoconference. All the incoming and outgoing MLA requests concerned the interrogation of persons as a witness (none of them concerned the accused persons or experts).[See reply for details on the procedure]</p>
Israel	Video	<p>Israel has had increasing experience in conducting hearings of witnesses and experts by videoconference as both a requesting and requested state, pursuant to Article 9 of ETS No. 182. In Israel, testimony via videoconference in criminal proceedings requires either consent of the parties or approval by the court. In most cases when videoconference proceedings have been conducted, both when Israel has been the requested and requesting state, the testimony was successfully provided and has furthered the proceedings.</p> <p>The primary challenges have been the length of time required to arrange videoconference proceedings between requesting and requested countries, the quality of videoconference facilities and equipment available, and challenges related to language and translation.</p>

7. Did you frequently receive or send spontaneous information on the basis of Article 11, ETS No.182? Please explain your experience in this.

“Article 11 – 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 receiving Party in initiating or carrying out investigations or proceedings, or might lead to a request by that Party under the Convention or its Protocols.*
2. *The providing Party may, pursuant to its national law, impose conditions on the use of such information by the receiving Party.*
3. *The receiving Party shall be bound by those conditions.*
4. *However, 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 reserves the right not to be bound by the conditions imposed by the providing Party under paragraph 2 above, unless it receives prior notice of the nature of the information to be provided and agrees to its transmission.”*

State	Frequency	Comments
Bosnia and Herzegovina	low	No. In practice we have very few case files of this sort.
Croatia	low	This possibility is sometimes used and information collected this way can be basis for criminal prosecution in "receiving" state .
Cyprus	none	No experience.
Czech Rep	low	Usually police authorities exchange spontaneous information. Judicial authorities registered minimum cases
Denmark	none	
Finland	none	
France	low	Very little
Germany	low	First and foremost spontaneous information is provided by police. Where German prosecutors received spontaneous information preliminary investigations were initiated. Where it was sent out, we received a notice that such investigations were initiated in the receiving State party.
Ireland	none	There are no experiences to share.
Latvia	high	The Prosecution Office often receives the spontaneous information according to Article 11 of ETS 182. On average 5-10 cases per month. Sending to other countries is rare. 3-5 cases per year.
Lithuania		Art. 11 of ETS No. 182 in practice is used when, conducting a pre-trial investigation, it emerges that the crime was committed neither in Lithuania, nor by a citizen of Lithuania or permanent resident, nor the alleged criminal act falls under the scope of the crimes of universal jurisdiction. It should be said that spontaneous information is often sent and received on the basis of other inter-national treaties (e.g. MLA

		2000).
Moldova	none	We didn't receive or send such information.
Montenegro	N/A	
Norway		No
Poland		The Ministry of Justice receives no information on this, due to the fact that the judicial exchange is direct. <i>.(original reply in French)</i>
Portugal		Central authorities have no information but judicial authorities know situations of spontaneous information, in particular with regard to the investigation of economic crime. <i>(original reply in French)</i>
Romania	low	Receiving or sending spontaneous information on the basis of Article 11, ETS No.182 is not frequently met. When used, it was made in the context either of already existing criminal proceedings or as basis to initiate request for cooperation. However, at the police level, especially within criminal cases having a trans-border dimension the process of spontaneous information is taking place more frequently.
Serbia	high	<p>Serbian judicial authorities, especially prosecution service, tends to use the possibilities provided by this Article to the widest extent possible, and prosecutorial best practice is to provide to competent authorities of signatories to ETS No.182 whenever possible information obtained within the framework of their own investigations, when it is considered that the disclosure of such information might assist the receiving signatory in initiating or carrying out investigations or proceedings, or might lead to an MLA request.</p> <p>On the other hand, prosecutor service has been on the receiving end of such information as well in a number of cases, and assess the information received based on Article 11 of ETS No.182 as a highly useful tool for fight against crime, leading very often to identification of perpetrators and criminal offences and initiation or carrying out investigations or proceedings.</p> <p>Serbian Law on mutual legal assistance in criminal matters contains as well a similar provision allowing to national judicial authorities to transmit, without letter rogatory, under the condition of reciprocity information relating to known criminal offences and perpetrators to the competent authorities of the requesting party if this is considered to be of use to criminal proceedings conducted abroad. Pursuant to this Article 98 of the Serbian MLA law, transmission of such information may be performed only if it does not hinder criminal proceedings conducted in the Republic of Serbia.</p>
Slovak Rep	low	Art 11 is practiced only rarely by the judicial authorities, in passive as well as in active form. The Slovak Republic has no negative experience with the procedure regarding this Article.
Slovenia	high	Slovenian prosecutor offices have very good experiences with receiving and sending spontaneous information, mostly with neighbouring countries. In their opinion this instrument enables exchange of valuable information in both ongoing criminal proceedings and investigative proceedings.
Sweden	none	This kind of information is usually channeled on police levels.

Switzerland	high	Swiss authorities regularly send spontaneous information but not all cases are based on the Protocol. The possibility offered to Parties to make a reservation on the basis of Article 11.4 is counterproductive. Certain parties complicate its application even more by issuing a reservation to 11.2. Switzerland rarely receives spontaneous information.
Turkey		No experience on the basis of Article 11. Although it is not applied frequently, spontaneous information is shared via Interpol.
United Kingdom	low	The UK do not find Article 11 helpful. It brings prosecutors/judicial authorities into a formal process that should (at least from a UK perspective) be a law enforcement cooperation issue. Law enforcement in the UK have domestic legal basis to share information as they see fit, not subject to formal judicial or prosecutorial oversight. However, where that law enforcement cooperation is unavailable it has been helpful to have been able to have used Art 11.
Ukraine	low	Such practice is rarely applied. Upon receipt of such communications from a foreign party, the competent authorities of Ukraine shall enter the relevant data into the Unified State Register of Pre-trial Investigations and conduct a pre-trial investigation of criminal proceedings within the territory of Ukraine.
Israel		Israel has been the recipient of spontaneous information on the basis of Article 11. The information is normally referred to the investigating authorities in order to determine whether it relates to any ongoing domestic investigations or warrants investigation. To date, Israel has not sent spontaneous information on the basis of Article 11 but has provided such information in rare cases of bilateral cooperation.

8. What is your experience with regard to the application of Article 12, ETS No.182?

“Article 12 – Restitution

1. *At the request of the requesting Party and without prejudice to the rights of bona fide third parties, the requested Party may place articles obtained by criminal means at the disposal of the requesting Party with a view to their return to their rightful owners.*
2. *In applying Articles 3 and 6 of the Convention, the requested Party may waive the return of articles either before or after handing them over to the requesting Party if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of bona fide third parties shall not be affected.*
3. *In the event of a waiver before handing over the articles to the requesting Party, the requested Party shall exercise no security right or other right of recourse under tax or customs legislation in respect of these articles.*
4. *A waiver as referred to in paragraph 2 shall be without prejudice to the right of the requested Party to collect taxes or duties from the rightful owner.”*

State	Experience	Comments
Bosnia and Herzegovina	yes	Concerning the application of Article 12 of the Protocol relating the restitution, we would like to hereby inform you that such requests are processed, i.e., the case files used for the execution of a criminal offence are returned.
Croatia	no	No significant experience/remarks in this field.
Cyprus	no	
Czech Rep	no	
Denmark	N/A	
Finland	no	
France	little	This type of restitution seems to be rarely requested
Germany	little	In isolated cases. Facts and circumstances in requests sometimes amount to embezzlement in German law and do not exclude bona fide purchase by third parties. Also safekeeping and return of valuable works of art is very costly.
Ireland	little	The Central Authority has little experience in processing Article 12 applications. However, legal advice has been sought and is awaited on how best to proceed with a recent request from a Member State.
Latvia	yes	The assets may be returned if its legal possessor is identified and the assets are at the disposal of a person directing the proceedings
Lithuania	little	There is minimum experience with application of this Article.
Moldova	no	
Montenegro	no	Montenegro, through the Ministry of Justice, as a central body of communication, has not registered requirements regarding the application of Article 12 ETS No. 182 in the previous practice.
Norway	no	Not so much experience with regard to this article. However, it is important to have the necessary legal basis.
Poland	N/A	
Portugal	no	

Romania	no	
Serbia	N/A	
Slovak Rep	little	The Slovak Republic has minimum experience with the application of this Article. In the past in this manner there were seized and returned motor vehicles on the basis of a request of Slovak authorities. The return of things is also executed on the basis of other international treaties.
Slovenia	yes	Usually the return of articles to the rightful owners is conducted through police cooperation during pre-trial procedure. Slovenian courts already executed foreign requests for restitution of articles.
Sweden	no	
Switzerland	no	This provision has never been applied. National MLA law allows for restitution.
Turkey	yes	Related with the requests for seizure, in order to protect the rights of bona fide third parties, it is requested from the requesting state to guarantee that possible damages shall be compensated. If it is guaranteed, the seizure is applied.
United Kingdom		The UK have not found Article 12 very helpful. It creates ambiguity between evidence and "articles obtained by criminal means" and potentially drawing the requested party into litigation around bona fide ownership. In regards to evidence it would be better to remove the presumption in Article 6(2) that evidence will be returned unless waived by the requested party. We do not tend to give evidence back unless its return is specifically requested.
Ukraine	yes	In recent years, there have been cases of the return of objects from crime at the request of the requesting states for the purpose of returning them to their lawful owners.
Israel		Israel has some, albeit limited, experience in transferring illicit criminal proceeds for the purpose of providing restitution for victims, however it should be noted that these transfers have been done in the context of domestic judicial proceedings or bilateral agreements.

- 9. How do you apply the provisions of Article 15, ETS No.182 regarding language of procedural documents and judicial decisions to be served? Do you make a distinction between direct transmission and transmission via central authorities? Please explain your experience in this.**

“Article 15 – Language of procedural documents and judicial decisions to be served

1. *The provisions of this article shall apply to any request for service under Article 7 of the Convention or Article 3 of the Additional Protocol thereto.*
2. *Procedural documents and judicial decisions shall in all cases be transmitted in the language, or the languages, in which they were issued.*
3. *Notwithstanding the provisions of Article 16 of the Convention, if the authority that issued the papers knows or has reasons to believe that the addressee understands only some other language, the papers, or at least the most important passages thereof, shall be accompanied by a translation into that other language.*
4. *Notwithstanding the provisions of Article 16 of the Convention, procedural documents and judicial decisions shall, for the benefit of the authorities of the requested Party, be accompanied by a short summary of their contents translated into the language, or one of the languages, of that Party.”*

State	Comments
Bosnia and Herzegovina	In practice, the documents have attached translations to the language of the requested country in most cases. We would like to remind that some provisions of Article 15 of the Protocol are hypothetical, such as Item 3 which states, among other things, the following “if the authority issuing the documents has knowledge or believes”. In any case, the receiver of documents can refuse the receipt thereof in case they do not understand the language of the document, therefore, it is in the best interest of the requesting country, i.e., the authority submitting the documents, to have them translated.
Croatia	When it is possible we apply this provision in a way that if it is known to the competent judicial authority that the person to whom judicial decision or procedural documents are to be served understands Croatian, the translation is not attached. The request itself should be translated into the language of the requested state. In a letter of the central authority (the Ministry of Justice) to the central authority of the requested state, a short summary of the content of those documents is attached, mostly in English. There were successful examples of this kind of service with some states. The service by post of judicial decision or procedural documents to a person is possible according to the Article 16, ETS No.182, and to apply accordingly provision regarding the language of the judicial decision or procedural documents, under the condition of reciprocity.
Cyprus	Service of documents are sent by the central authority, with a

	translation into the language of the requested state.
Czech Rep	Art 15.3 is respected for outgoing MLA's for delivery of documents. In case of incoming requests for delivery, MLA request is sent back indicating why the person concerned rejected to take over the document.
Denmark	The provisions are applied as written. There is no distinction between direct transmission and transmission between central authorities.
Finland	Article 15 has remained a dead letter; service of documents is still routed through the MOJ, both in and out, with the usual translation requirements.
France	When foreign documents to be served have no translation attached, the central authority applies art 15. 3. The central authority has no knowledge of practices in case of direct transmission.
Germany	In the context of requests submitted, translations into the language of the requested state will be included with these requests, as well as with the corresponding documents. Application of Art.15.3 is common practice. Where incoming requests are concerned, the vast majority of them will include as attachments translations into German of the request and of the documents to be served.
Ireland	The translation of procedural documents and judicial decisions into a relevant language is only required in circumstances of personal service transmitted via the Central Authority. The Central Authority has no involvement in direct transmissions. Translations are not required for postal service.
Latvia	The competent authority serves the documents to a person in language which that specific person understands. The documents are sent both through central authorities and directly as well. Sometimes the sent documents are returned. Mostly because storage deadline in a specific post office has expired. Then documents are sent again through the diplomatic channels.
Lithuania	In case of direct transmission no translation is added - the documents are sent in the language the person whom the documents are addressed to, knows. In cases of transmission via central authorities, the outgoing MLA requests and documents attached thereto are sent in original language accompanied by a translation in a language specified in the relevant international treaty or in official language or other acceptable language by the requested country. In case of incoming MLA requests (via central authorities), the Republic of Lithuania has made a reservation to Art. 16 Para 2 of ETS No. 030 that the requests and annexed documents should be addressed to it in Lithuanian or accompanied by a translation into one of the official languages of the Council of Europe.
Moldova	The documents and judicial decisions requested through MLA request are sent in the language, or the languages, in which they were issued. The documents and judicial decisions are transmitted

	through the same channels by which the MLA request had been received.
Montenegro	The domestic judicial authorities shall submit the documentation in the Montenegrin language, with a translation into the language of the requesting State, or in English or French, as the languages of the Council of Europe. It is acted upon requests from foreign judicial authorities that have been translated into Montenegrin, or in languages that are officially used in Montenegro or by letters written in English or French. Documentation to be delivered to a recipient who, according to the knowledge of the competent authority, understands only some other language, shall be translated into that language. The mode of communication is not influenced by translation.
Norway	In general, with regard to outgoing requests, translations into the language of the requested state will be included. If an incoming request for service of documents is not accompanied by translations, it may be sent to voluntary service. This means that the addressee may refuse service on the grounds of the language used, please see Norway's declaration to ETS No 30 art 16.
Poland	There is a clear distinction : in case of direct transmission there are rare cases where the language of the documents and decisions are problematic due to poor translations. This problem does not exist in case of transmission through the central authorities. <i>(original reply in French)</i>
Portugal	Authorities are encouraged to leave in Portuguese the documents to be served to nationals living in another Party. We identified no problems when the outgoing request is well explained. <i>.(original reply in French)</i>
Romania	When using Article 15, it is not the channel of communication that makes the distinction, but the language the addressee speaks/knows. If the addressee is a Romanian national, procedural documents and judicial decisions are transmitted in the Romanian language. As for the parties and subjects in the criminal proceedings who do not speak or understand the Romanian language procedural documents and judicial decisions are transmitted in the language they know. Consequently, when submitted via central or judicial authority of the requested state, and the documents addressed to the addressee have been issued in Romanian or translated into another language than the official language of the requested state, for the benefit the requested authorities the documents in case will accompanied by a short summary of their contents translated into the appropriate language (depending on the declaration made by the respective state).
Serbia	The Republic of Serbia makes significant efforts to ensure the translation in both outgoing and incoming MLA requests (with accompanying documentation). There is shortage of qualified (for legal language) translators for some languages.
Slovak Rep	The Slovak Republic does make a distinction between a direct transmission of a document to its addressee and a transmission on

	<p>the basis of a request for legal assistance. The procedural effects of the transmission in both cases are the same. The direct transmission is practiced when it is enabled by an international treaty. If the addressee does not understand the Slovak language, a translation is enclosed to the document. If the addressee does understand the language of the elaborated document, only a short information on the content of the document is provided in the request for legal assistance for the authorities of the requested state.</p>
Slovenia	<p>When the documents are transmitted directly to the addressee, they are written in the language of the requesting state if the addressee understands the language of the documents. If the requesting authority knows that the addressee understands only some other language, the documents are accompanied by a translation into that other language. In case the documents are transmitted via central authorities the request for service of documents is written in the language that is acceptable to the central authority and the documents to be served to the addressee are in the language of the requesting or requested authority, depending on the language that is understandable to the addressee and the requirements of the requested country.</p>
Sweden	<p>There is no pattern as to whether an incoming request for service in criminal matters is accompanied by the documents to be served translated into Swedish or not. When proceeding the requests without such translation, the addressee is always being advised about his/her right to refuse the service on the grounds of the language used, this under the terms of para 4 (a) of the Swedish Service Act (2010:1932).</p> <p>National legislation provides for the obligation of the court to translate procedural documents in criminal matters, or at least essential parts thereof, to be served abroad when there are reasons to believe that the addressee does not understand Swedish language.</p>
Switzerland	<p>Most Swiss authorities translate the request and essential documents in the language of the requested Party if it requires so. Requesting Parties usually send us the documents in the original language with a translation. Sometimes only in the original language and in most cases these are to be served to nationals of the requesting Party. In these cases the request for service usually explains the decision or act to serve (in one of the Swiss national languages). In rare cases, where the addressee doesn't understand the language of the documents served our need to request additional information may lead to problems in respecting the delays required. No distinction is made between direct transmission and transmission by the central authorities.</p>
Turkey	<p>The procedural documents and judicial decisions are served with Turkish translations via the central authority.</p>
United Kingdom	<p>Procedural documents may be sent directly by the requesting authority to the persons in the UK to whom they relate. The UK strongly encourages direct transmission of procedural documents to persons by post, unless this is not legally possible under the</p>

	domestic law of the requesting authority.
Ukraine	<p>Regarding outgoing MLA requests, the request and documents attached thereto shall be accompanied by a translation certified in accordance with the established procedure in a language specified in the relevant international treaty of Ukraine or, in the absence of such treaty, in an official language of the requested Party, or any other language acceptable for that Party. When submitting a request to the competent authorities of foreign states, the competent authority of Ukraine sets forth the summary of procedural documents, the service of which is requested, in its request.</p> <p>In case of incoming MLA requests - pursuant to the Declaration made in accordance with Article 16 of the ETS 030 -the requests and annexed documents shall be sent to Ukraine together with a translation into Ukrainian or into one of the official languages of the Council of Europe unless they are drawn up in those languages. Regarding Para 3 of Article 15 of the ETS 182, it should be noted, that [...]if the documents to be served do not contain a Ukrainian translation and are drawn up in a language that is unknown to the person specified in a request, that person may refuse to accept the documents. In this case, the documents shall be deemed those that were not served.</p> <p>Regarding Para 4 of Article 15 of the ETS 182, it should be noted, that in case the procedural documents and judicial decisions are accompanied by a short summary of their contents translated into Ukrainian or English/French, it speeds up the process of consideration and prompt execution of the MLA request irrespectively of whether the request is received by a Central Authority or authority, empowered for direct cooperation under the international treaty.</p> <p>Upon receipt of foreign requests for service of documents, procedural documents and judicial decisions are transmitted in the language or languages in which they were drawn up and in most cases accompanied with its translation or translation of short summary of the documents.</p>
Israel	N/A

10. Has the service by post of procedural documents and judicial decisions, directly addressed to persons living in another State Party (Article 16, ETS No.182) become usual practice? Please explain.

“Article 16 – Service by post

1. *The competent judicial authorities of any Party may directly address, by post, procedural documents and judicial decisions, to persons who are in the territory of any other Party.*
2. *Procedural documents and judicial decisions shall be accompanied by a report stating that the addressee may obtain information from the authority identified in the report, regarding his or her rights and obligations concerning the service of the papers. The provisions of paragraph 3 of Article 15 above shall apply to that report.*
3. *The provisions of Articles 8, 9 and 12 of the Convention shall apply mutatis mutandis to service by post.*
4. *The provisions of paragraphs 1, 2 and 3 of Article 15 above shall also apply to service by post.”*

State	Usual practice	Comments
Bosnia and Herzegovina	No	
Croatia	No	The service by post of procedural documents and judicial decisions, directly addressed to persons living in another State Party is used regarding the States who ratified Second Additional Protocol and didn't make a reservation on Article 16, under the condition of reciprocity. However, service via central authority is still common way of communication.
Cyprus	No	Service of documents is done through the central authority.
Czech Rep	No	Service by post can be chosen in some cases
Denmark	No	Most legal documents served by post require the person concerned to respond back in order for the service to be legally valid. This return notification is very rarely received when the service is done by post.
Finland	No	Service of documents is still routed through the MOJ, both in and out
France	Unknown	The central authority has no statistics on this issue
Germany	As requested State only	Germany has ruled out the application of Article 16 ETS No. 182: no direct service of procedural documents by post is performed outside of the scope of application of the Convention Implementing the Schengen Agreement and of the European Convention on Mutual Assistance in Criminal Matters. Requests for service of procedural documents will be complied with subject to the stipulations of the respective request (by post, or, where this has been requested, by personal delivery). In the meantime, service by post has become the standard.
Ireland		The responsibility for service by post of procedural documents and judicial decisions, directly addressed to persons living in another State rests entirely with judicial authorities and is outside the

		remit of the Central Authority.
Latvia	Yes	It is possible to send the documents by post.
Lithuania	No	Lithuania has made a reservation to Article 16 of the Protocol.
Moldova	No	
Montenegro	No	Montenegro made a reservation to Art 16.
Norway	No	Norway has made a reservation to article 16.
Poland	Yes	Service by post is current practice with very good results. <i>.(original reply in French)</i>
Portugal	Yes	Except where the Code of criminal procedure does not allow it, there are many cases where personal notification is mandatory. <i>.(original reply in French)</i>
Romania	Yes	Only if the other state party applies Article 16 (there are states parties excluding Article 16 from the scope of application, or involving central authorities).
Serbia	No	The Republic of Serbia has made a reservation regarding article 16 and does not accept the implementation of the provisions of Article 16 of the Protocol.
Slovak Rep	No	The Slovak Republic made a reservation to this Article and excluded its application. The direct transmission is carried out on the basis of other international treaties (e.g. MLA 2000). However problems with the direct transmission occur (e.g. unreturned affidavit of service, therefore the reception becomes legally ineffective).
Slovenia	Yes	In practice a majority of judicial authorities make use of direct service of documents abroad; however service of documents via central authorities is still in use in cases where direct service was unsuccessful or where there are doubts about the correct address of the addressee.
Sweden	Yes	The Swedish Central Authority always recommends national jurisdictions to use direct postal service in the first place, this is also in line with national service legislation that stipulates that the service shall imply lowest possible expenses. Only if such direct postal service has failed does the Central Authority suggest the use of both ETS 030 and, when applicable, ETS 182.
Switzerland	Yes	In most cantons and in particular to neighbouring states this is usual practice. One canton indicated a serious problem in case the postal services of states do not provide acknowledgments of receipt. A list of states allowing authorities of requesting states to obtain acknowledgments of receipt would be helpful to choose the method of service.
Turkey	No	Turkey made a reservation to this article and shall not accept the service of procedural documents and judicial documents by post directly to the persons living in Turkey. The service documents are sent to the Ministry of Justice as the central authority. The service procedure is executed by the Ministry of Justice through the courts or public prosecution offices.
United Kingdom	Yes	Yes the UK support this but note a lot of countries have made declarations not applying the clause. Outgoing service by post of procedural documents and judicial decisions (where applicable) are sent directly to the addressee by the competent authority.
Ukraine	No	Ukraine reserved the right not to apply Art.16. If there is a need to

		serve procedural documents or judicial decisions, directly addressed to persons living in another State Party, the competent authority of Ukraine shall submit a request for international legal assistance to the competent authorities of the foreign state concerned.[...] Consulates or diplomatic missions of other states in Ukraine have the right to deliver documents to citizens of the state they represent.
Israel		N/A

11. What has been your experience in the application of special investigative techniques as mentioned under Articles 17, 18, 19 of ETS No. 182, both as a requesting and requested Party? Please describe.

Article 17 – Cross-border observations

Article 18 – Controlled delivery

Article 19 – Covert investigations

State	Experience	Comments
Bosnia and Herzegovina	Yes	Bosnia and Herzegovina processes the letter rogatories related to the application of special investigation techniques stated in Articles 17, 18 and 19 of the Protocol, and the experience so far shows that such requests are often fulfilled in the majority of cases. We would like to emphasise here that direct communication has been enabled between the authorities from the requesting and the requested country in respective procedures, given that certain actions are also conducted via the Ministry of Justice of Bosnia and Herzegovina.
Croatia	No	Republic of Croatia made reservation on Articles 17, 18 and 19.
Cyprus	No	
Czech Rep	None	
Denmark	No	All countries bordering Denmark are EU and Schengen members, and such special investigative techniques are handled according to the rules in the Schengen Convention. We are not aware of any investigations having taken place according to article 19.
Finland	No	We do not apply articles 17 and 18 at all and article 19 only in a limited manner, no experiences.
France	Limited	Cross-border observations and controlled deliveries are rarely requested by judicial authorities and implemented on the basis of EU/Schengen instruments. Several covert investigations have been authorised on the basis of ETS 182.
Germany	Art.17 sometimes	On some occasions, special investigative techniques are applied in the form of cross-border observations pursuant to Article 17 ETS No. 182, for example with Poland.
Ireland	Art. 18	In accordance with Article 33 Para. 2 Ireland does not accept Articles 17 and 19 . Legislation provides for Controlled Deliveries for the purposes of an investigation into an offence where there are reasonable grounds for believing that it is in the public interest having regard to the benefit likely to accrue to the investigation, to permit the delivery to take place. In the case of the Irish Revenue Commissioners joint cross border operations have been conducted with UK HMRC. In such circumstances, a formal JIT is generally established. [...]Such operations have been carried out successfully. More commonly, Revenue Customs sends a Mutual Assistance request under the provisions of Naples II, to allow a container/consignment continue on its journey to this jurisdiction for the purposes of conducting a controlled delivery. We have received full cooperation from the relevant Member States when this action has been requested. Likewise, should

		Revenue receive such a request, we will comply as requested.
Latvia	Unknown	The Prosecution Office is not competent authority in these matters. The State Police is responsible for it.
Lithuania	Art 18 Limited	Lithuania has availed itself of the right not to accept Article 17 of the Protocol. The application of special investigative techniques as mentioned under Articles 18 and 19 of ETS No. 182 are not common, however, the controlled delivery is applied (although rarely) in practice, e.g. within the content of JIT.
Moldova	Art 18 Limited	We have had 2 incoming and one outgoing MLA requests regarding controlled delivery (art. 18) so far. We didn't encounter any problems in the application.
Montenegro	N/A	
Norway	Yes	These special investigative techniques may be useful in serious cases. However, our experiences in this regard is mostly based on other conventions.
Poland		No answer
Portugal	No	No information available
Romania	Yes	We have an extensive experience both as a requesting and requested state. Special investigative techniques have been conducted either in the context of joint investigation teams or as a separate requests for cooperation addressed in bilateral or multilateral cases. They have been used either individually or in conjunction with other special investigative techniques, mainly within the investigation of serious offences (including organized crime).
Serbia	Yes	<p>Prosecution service of the Republic of Serbia has gained to this date significant experience in international cooperation with respect to special investigative techniques, both based on incoming and outgoing mutual legal assistance requests. MLA requests related to special investigative techniques have become the usual practice of competent authorities, and therefore such request are being executed efficiently and without delays, being noted in particular that except controlled deliveries, all special investigative techniques are being implemented upon the court order. For the controlled deliveries, an order of the Republic public prosecutor or the prosecutor of special jurisdiction is needed.</p> <p>Besides relevant articles of ETS No. 182, Serbian Law on Mutual Legal Assistance in Criminal Matters provides as well in its Article 83, among so-called <i>other forms of MLA</i> that may be provided under this law implementation of measures such as surveillance and tapping of telephone and other conversations or communication as well as photographing or videotaping of persons, controlled delivery, provision of simulated business services, conclusion of simulated legal business, engagement of under-cover investigators, computer search and data processing, being noted that Criminal Procedure Code of the Republic of Serbia regulates the implementation of special investigative techniques in more details.</p>
Slovak Rep	Art 18	The Slovak Republic made reservations to Articles 17 and 19 excluding their application.

		Regarding Article 18, the Slovak Republic issued a statement on basis of which the requests of a foreign authority shall be accepted only if they are relating to the controlled import, export or transit of a delivery if the circumstances of the case justify the assumption that the delivery without proper permit contains narcotics, psychotropic substances, precursors, poisons, nuclear and other similar radioactive materials, counterfeit money or securities, firearms or weapons of mass destruction, ammunition or explosives and the requesting party shall provide the assurance that the information obtained as outcome of legal assistance shall be procured with adequate protection. This statement results from the interior public provision of the institute of controlled supply. There were no negative experiences during the application of the stated provision that would deserve particular attention.
Slovenia	Yes	Prosecutor offices have already executed some foreign request (mostly with neighbouring countries) for cross-border observation, controlled delivery and covert investigation. At the same time successful cases of executed outgoing requests for application of special investigative techniques were reported. Police are of opinion that the Protocol enables exchange of information and successful execution of special investigative techniques. Some practical difficulties arose in urgent cases where translation of requests for MLA and documentation was needed for the purposes of ordering some investigative measures. Courts executed foreign requests regarding covert investigations, which were successful
Sweden	No	None under ETS 182. There have been cases of ad-hoc-cooperation with states outside the EU concerning e.g. controlled deliveries within the 1959 conventions framework.
Switzerland	limited	Cross border observation: can be ordered by police only its continuation requests authorization by public prosecutor via MLA. Controlled deliveries will normally be handled on the basis of bilateral police agreements. Covert investigations were used in complex cross-border proceedings with Germany. SIT are rarely used in Swiss Romandy.
Turkey	No	The Republic of Turkey did not accept Article 17 (cross-border observations) by making a reservation. There is no experience related with the other articles.
United Kingdom	Limited	Special investigative techniques <ul style="list-style-type: none"> • Cross-border observations – the NCA conducts or reacts to cross-border observation requests on a police-to-police basis OR use of under Article 40 of the Convention Implementing the Schengen Agreement, although the latter is used less frequently than on mainland Europe due to the lack of land borders with other countries. • Controlled deliveries – the NCA conducts controlled deliveries using police-to-police cooperation, it does not rely on CoE Conventions. • Covert investigations – as above.
Ukraine		Ukraine invoked the right not to accept Articles 17 and 19.

		For the purposes of Article 18, the departments of the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine and the State Border Guard Service of Ukraine are the competent authorities of Ukraine.
Israel		Israel made a reservation to Article 17

12. Have you ever organised a JIT on the basis of Article 20 ETS No. 182? If so, please explain your experience.

State	Experience	Comments
Bosnia and Herzegovina	Yes	Bosnia and Herzegovina, i.e., the Prosecutor's Office of Bosnia and Herzegovina, has an organised joint investigation team with the Republic of France. In line with the provisions of the Law on International Legal Assistance in Criminal Matters, joint investigation teams are formed through agreements between competent Prosecutor's Offices in two or more countries, the formation of which must be recorded in the Ministry of Justice of Bosnia and Herzegovina.
Croatia	Few	Disregarding the JITs in framework of police cooperation, the Ministry of Justice did not participate in JITs but is aware that there were few organised JITs. Certain difficulties related to use of evidence collected in another country in domestic proceedings and translation of voluminous documentation occurred as problems.
Cyprus	No	
Czech Rep	Yes	Public prosecutor's offices have concluded several JIT agreements on the basis of Article 20 of ETS No. 182. (so far agreements on creation of JITs have been concluded with Switzerland, Serbia and Moldova).
Denmark	No	
Finland	No	
France	Few	France signed 2 JITS based on art 20 ETS 182 as well as a protocol framework agreement on JIT with Serbia (in October 2016)
Germany	Yes	Practitioners in Germany appreciate the opportunity to form joint investigation teams on the basis of Article 20 ETS No. 182 and have done so in several instances. Without exception, the experience gained is positive. An example of "excellent cooperation" was formed with Serbia to deal with organised crime.
Ireland	No	A Garda Síochána (Irish Police) has not participated in a Joint Investigation Team to date, as it has been the preferred option to conduct parallel investigations and to exchange evidence by way of Mutual Assistance Requests. However, a working group has been established in this regard and is due to present its findings on the matter. See comments relating to Revenue Commissioners at Question 11 above.
Latvia	No	Latvia is setting up and participating in JITs with the EU Member States. The legal ground is the Convention of 2000.
Lithuania	Yes	Lithuania is setting up and participating in JITs on the basis of Article 20 ETS No. 182, e.g. with Moldova, Romania, Bulgaria and Ukraine. However, it should be noted that in most of the instances of setting up and participating in JITs with the EU Member States the legal ground was the Convention of 2000.
Moldova	Yes	We have had organised 10 JITs: 7 of which with Romania
Norway	No	Our prosecuting authorities have participated in joint

		investigation teams in several instances, but to our knowledge the legal basis has been the EU legal framework. However, our experiences with JITs are generally very good.
Montenegro	No	There were no JITs in accordance with Article 20 ETS No. 182, so far.
Poland		No answer
Portugal	Limited	We established a JIT with Switzerland, producing positive results. <i>(original reply in French)</i>
Romania	Yes	We have a large experience in terms of joint investigation teams. The majority of JITs have been concluded with EU MS, and therefore the legal basis was the EU legal framework (which in terms of wording and legal effects do not differ from Article 20 ETS 182). We concluded JITs based on Article 20 ETS 182 too. RO experience is extremely positive and all the results obtained have clearly indicated that the best way to approach a transnational case is to have such an agreement concluded. At the practical level there are a lot of advantages among which we can shortly list real-time exchange of information, real-time coordination, joint activities, common strategy to investigate, prosecute. All these advantages are directly reflected within the dynamic and effectiveness of the criminal proceedings.
Serbia	Yes	To the present date, Republic of Serbia concluded in total 6 agreements on the establishment of joint investigation teams on the basis of Article 20 ETS No. 182. Joint investigation teams proved to be an extremely efficient tool of international cooperation. These JITs facilitated international cooperation improving the effectiveness of investigations, in particular due to possibility for the competent authorities to share information directly without the need for formal requests, possibility for the representatives of the competent authorities to be present at questionings and interrogations, searches etc. In addition, operational meetings organised and held between the members of the JITs proved to significantly increase the efficiency of both investigations and international cooperation.
Slovak Rep	No	The Slovak Republic made a reservation to Article 20 excluding its application. All JITs where the Slovak Republic is a contracting party were established on the basis of Article 13 of MLA 2000.
Slovenia	No	Till now Slovenian prosecutor offices organized and cooperated in JITs with other member states of the European Union. The JITs were very successful
Sweden	No	
Switzerland	Yes	JITs are a very efficient tool, used in particular with neighbouring states in procedures concerning transfrontier economic crime, terrorism and organised crime. JITs require excellent understanding of the role of each party, possibilities and legal limits as well as perfect coordination of criminal investigations. A high level of mutual confidence is required. In practice, JIT's were established only with a few countries, such as Czech Republic, Italy, France, Portugal and Germany. Due to Swiss law, several procedural measures have to be ordered. This could be an obstacle for foreign authorities to arrange JIT's with Switzerland.

		At present a JIT is being established between the Canton of Vaud and Romania.
Turkey	No	There is not any experience about this issue.
United Kingdom	No	The UK participates in JITs through Eurojust and Europol, it is a significant user of and contributor to this tool.
Ukraine	Yes	<p>For instance, in August 2017, pursuant to Article 20 of the ETS 182, the Prosecutor General's Office of Ukraine and the National Public Prosecutor's Office of the Republic of Poland signed an agreement on the establishment of the Joint Investigation Team for investigating the firing of the building of the Consulate General of the Republic of Poland in Lutsk.</p> <p>Additionally, for the purpose of investigating a plane crash of the passenger aircraft "Boeing 777" of Malaysia Airlines in the territory of Ukraine, which took place on 17.07.2014, the Prosecutor General of Ukraine signed an agreement on the establishment of the International Joint Investigation Team (hereinafter referred to as "JIT") on 07.08.2014. The parties to the agreement, along with Ukraine, are the Kingdom of the Netherlands, the Kingdom of Belgium and Australia.</p> <p>Such practice is particularly important for rapid exchange of information and gathering evidence in high-profile criminal proceedings.</p>
Israel	No	The Israeli authorities have not organized or participated in joint investigation teams on the basis of Article 20, however, the Israeli authorities have had success in ensuring effective coordinated parallel investigations, the results of which can be shared expeditiously via mutual legal assistance channels. The Israeli authorities are in the process of reviewing whether it will be possible in future cases to carry out coordinated investigations in a manner that is similar to a JIT.

13. Have you encountered any other legal or practical obstacle in the application of ETS 182? Please explain.

State	Comments
Bosnia and Herzegovina	No. On the contrary, the Protocol has facilitated the communication and improved the efficiency of providing international legal assistance in criminal matters between signatory countries.
Croatia	N/A
Cyprus	
Czech Rep	Czech Republic would like to propose to pay further attention to the practical aspects of using the video conference in the State Parties to the ETS No. 182, where it is difficult for judicial authorities in the requesting state to identify the proper channels and necessary technical information to be provided, when the MLA request for hearing via video conference is being prepared. Other obstacle not encountered.
Denmark	No
Finland	Just minor difficulties that have been cleared with email exchanges.
France	No
Germany	No
Ireland	N/A
Latvia	We have not encountered any practical and legal obstacles.
Lithuania	So far the Republic of Lithuania has not noticed any serious obstacles in the application of ETS 182.
Moldova	There have been no problems so far.
Montenegro	There was no obstacle in the application of ETS 182.
Norway	N/A
Poland	N/A
Portugal	No
Romania	No
Serbia	N/A
Slovak Rep	As a practical obstacle we consider the nonexistence of the contact addresses of the competent judicial authorities
Slovenia	A practical obstacle is that there are no safe channels for exchange of documents between judicial authorities of different states, which are of confident or secret nature.
Sweden	No
Switzerland	No
Turkey	Not yet
United Kingdom	No. If the UK is unable to support a request, we give reasons for refusal, and often consult with the requesting authority, inviting it to modify the request so that assistance may be provided.
Ukraine	There are certain obstacles to applying the provisions of Article 12 (Restitution), namely when deciding issues of returning the property from crime to lawful owners, since such actions, in certain cases, cannot be performed without violating the rights of

	bona fide purchasers of the said property.
Israel	Not at present

14. If your country, by virtue of Article 33 para 2, has made reservations to Articles 16,17,18,19 or 20 of ETS No. 182, is a (partial or total) withdrawal of these reservations being considered? Please explain.

State	Comments
Bosnia and Herzegovina	N/A
Croatia	The application of the special investigative techniques provided under Articles 17, 18 and 19 is currently not possible in the framework of cooperation between judicial authorities.
Cyprus	N/A
Czech Rep	Czech Republic has made no reservation by virtue of Article 33 par2.
Denmark	N/A
Finland	No, not at this stage anyway.
France	France issued a reservation: art 17 para 2 is not applied
Germany	The current experience has not yet led Germany to considering this.
Ireland	Not at this time
Latvia	No
Lithuania	Lithuania has made reservations in respect of Articles 16 and 17. Withdrawal has not been yet considered.
Moldova	N/A
Montenegro	For the time being, the possibility of withdrawing the reservation to Article 16 is not considered.
Norway	Not at this stage
Poland	We do not consider withdrawal of our reservations. <i>.(original reply in French)</i>
Portugal	N/A
Romania	No reservations, however we did make declarations in accordance with Article 17 (4) and Article 18 (4) and these declarations need to be amended as they do not reflect the current state of play (legislation) in Romania.
Serbia	N/A
Slovak Rep	The Slovak Republic made reservations to Articles 16, 17, 19 and 20 From the title of central authorities a partial withdrawal of these reservations is being considered.
Slovenia	N/A
Sweden	none
Switzerland	N/A
Turkey	Reservations were made to the Articles 16 and 17, and the withdrawal of these reservations is not being considered.
United Kingdom	The UK has made reservations to Article 17 (Cross-Border Observations) and does not foresee its withdrawal.
Ukraine	Ukraine made reservations to Articles 16, 17 and 19. Withdrawal of these reservations is not currently considered.
Israel	Not at present

15. Do you have any other comments or proposals related to ETS No. 182?

State	Comments
Bosnia and Herzegovina	N/A
Croatia	N/A
Cyprus	N/A
Czech Rep	No other comments
Denmark	No
Finland	No
France	No
Germany	In some instances, the authorities report that ETS No. 182 is being applied in a relatively small number of cases. It bears noting in this context that the most states with whom international judicial cooperation on the basis of ETS No. 182 might serve as an option have made comprehensive declarations and reservations regarding the Second Protocol, in particular with a view to the channels of communication set out in Article 4 ETS No. 182. Furthermore, it is noted that a large number of the states who have ratified ETS No. 182 are Member States of the European Union and/or Schengen States, in the relationship with whom mutual legal assistance, from Germany's perspective, is foremost based on other legal instruments.
Ireland	N/A
Latvia	No
Lithuania	No, Lithuania has no comments or proposals related to ETS No. 182.
Moldova	No
Montenegro	N/A
Norway	N/A
Poland	N/A
Portugal	No
Romania	No
Serbia	N/A
Slovak Rep	The Slovak Republic has no other comments or proposals related to ETS No. 182. It is considered as an effective instrument of the judicial cooperation relating to states who are not signatory to MLA 2000.
Slovenia	No
Sweden	The Prosecution Authority: Sweden is a party to the Strasbourg 1959 convention and its two additional protocols. However, practical use of this convention by the prosecution authorities has diminished during the years, and been replaced first by the Schengen Convention and then by the European Union Convention, which takes precedence, and is the most commonly applied. The prosecution authorities' practical experience of using the tools in the second protocol is therefore very limited. It can probably be useful in relation to countries that are not party to the

	<p>EU conventions.</p> <p>The Courts: There are no available statistics or data on the practical application of the Protocol in proceedings in the Swedish Courts. The government has, however, not received any indications from the Courts or the Swedish National Courts Administration that the Courts have encountered any legal or practical obstacles in the application of the rules and regulations implementing the protocol.</p>
Switzerland	<p>Many important EU countries did not ratify ETS N° 182. Although the EU MLA Convention of 2000 certainly covers the needs of these countries within the EU, it doesn't with regard to non EU countries. The cooperation between these States and Switzerland and other non EU States would be considerably reinforced by the ratification of this ETS.</p>
Turkey	<p>There are no other comments or proposals related to ETS No. 182.</p>
United Kingdom	<p>None</p>
Ukraine	<p>We do not have any comments or proposals.</p>
Israel	<p>No</p>