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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)**

# Compilation 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)

# Compilation des réponses au

# Questionnaire sur l'application du Deuxième Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale (STE n° 182)

# Contents

Introduction....3
Andorra / Andorre....4
Austria / Autriche....5
Croatia / Croatie....6
Czech Republic / République Tchèque....10
Denmark / Danemark....13
Finland / Finlande....16
France....18
Germany / Allemagne....21
Greece / Grèce....27
Ireland / Irlande....28
Latvia / Lettonie....32
Republic of Moldova / République de Moldova....35
Monaco....38
Portugal....39
Romania / Roumanie....42
Slovakia / Slovaquie....47
Slovenia / Slovénie....51
Sweden /Suède....55
Switzerland / Suisse....59
Turkey / Turquie....65
Ukraine....68
Questionnaire....74

## Introduction

In the context of the Action Plan on Combatting Transnational Organised Crime (TOC), the PC-OC organised, on 16 November 2016, during its 71st meeting, a Special session devoted to the "New opportunities for mutual assistance in criminal matters offered by the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters".

As a follow up to this session, the PC-OC decided to develop a questionnaire on the application of this Protocol, also taking into account the conclusions of the Review of the Conventions of the Council of Europe within the remit of the PC-OC [Doc PC-OC (2015)06rev] which was finalised in November 2015 during the 69th meeting of the PC-OC.

This questionnaire, adopted by the PC-OC in May 2017, during its 72nd meeting, aims to assess the application of the Protocol - which is of particular importance in the fight against TOC- so as to identify possible obstacles encountered. In order to find out whether further ratifications are to be expected, the questionnaire also contains two questions addressed to countries who are not yet Parties to the Protocol.

*Dans le cadre du Plan d'action sur le crime organisé transnational (COT), le PC-OC a organisé le 16 novembre 2016, durant sa 71me réunion, une Session spéciale consacrée aux « Nouvelles possibilités pour l'entraide judiciaire en matière pénale créées par le Second Protocole Additionnel à la Convention sur l'entraide judiciaire en matière pénale ».*

*Suite à cette session, le PC-OC a décidé de développer un questionnaire sur l'application de ce Protocole, tenant également compte des conclusions du Passage en revue des Conventions du Conseil de l'Europe relevant du PC-OC [Doc PC-OC (2015)06rev] qui fut finalisé en novembre 2015 durant la 69me réunion du PC-OC.*

*Le questionnaire, adopté par le PC-OC en May 2017, durant sa 72me réunion, vise à évaluer l'application du Protocole- qui est particulièrement pertinent dans la lutte contre le COT- pour identifier les éventuels obstacles rencontrés. Afin de savoir si d'autres ratifications sont prévues, le questionnaire contient deux questions adressées aux pays qui ne sont pas encore Parties au Protocole.*

## Andorra / Andorre

Si votre pays n'est pas Partie à ce Protocole

1. Si votre pays n'est pas Partie à la STE n° 182, la ratification de celle-ci est-elle envisagée ?

   Pour le moment, l'Andorre n'envisage pas la ratification.

2. Pourriez-vous faire part de votre expérience concernant l'application des questions régies par les articles 16 à 20 de la STE n° 182 sur la base d'autres instruments ou traités bilatéraux ou multilatéraux ?

## Austria / Autriche

If your country is not a Party to this Protocol

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

   The President of the Republic of Austria signed the ratification document on 24 April 2017.

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?

   Service by post (Article 16): The service by post of procedural documents and judicial decisions, directly addressed to persons living in another State Party, has become usual practice. No major problems are reported.

   Cross-border observations (Article 17), Controlled delivery (Article 18) and covert investigations (Article 19): These measures are applied on a regular basis. Problems are not reported with regard to the application of the Protocol. 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.

   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.

## Croatia / Croatie

If your country is a Party to this Protocol

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?

   Incoming and outgoing requests brought by administrative authorities are forwarded by the Ministry of Justice. 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.

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.

   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.

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.

   In order to complete the request for mutual legal assistance seeking information on bank account, according to the Criminal Procedure Code of the Republic of Croatia, it is necessary to have an order issued by the competent judicial authority for obtaining the data on a bank account. The decision is a legal basis for rendering our own decision based on which the competent authority will execute the requested actions.
   Also in order to complete request for mutual legal assistance seeking special collection of evidence (surveillance and interception of telephone conversations and other means of remote technical communication etc.) according to the Criminal Procedure Code of the Republic of Croatia, it is necessary to have an order issued by the competent judicial authority ordering special evidentiary actions temporarily restricting certain constitutional rights of citizens.

The order issued by the competent judicial authority is also necessary in cases where molecular-genetic analysis is requested.

In all those kind of cases 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.

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?

Concerning Article 9, paragraph 9, of the Second Additional Protocol, the Republic of Croatia made declaration that it will not apply the provisions of this Article 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. The request for examination of the witness should be sent in original, via regular mail, but further communication (regarding terms, data on technical equipment etc.) most often continues via electronic mail and telephone.

Telephone conference is possible only for the purpose prescribed by the Criminal Procedure Code;
"The State Attorney or the police may check the alibi and other important facts for the institution and conducting of the criminal proceedings by means of a telephone link that allows a simultaneous communication to the interrogated persons (telephone conference)."

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

This possibility is sometimes used and information collected this way can be basis for criminal prosecution in "receiving" state .

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

   No significant experience/remarks in this field.

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.

   Yes, 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.

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.

    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.

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.

    Republic of Croatia made reservation on Articles 17, 18 and 19.

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

    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.

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

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.

    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.

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

## Czech Republic / République Tchèque

If your country is not a Party to this Protocol

--- (Czech Republic is a party to the Protocol ETS No. 182).

If your country is a Party to this Protocol

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?

   Czech Republic has no experience which could share with respect to MLAs brought up by administrative authorities according to Art. 1 par. 3 of ETS No. 182. However, such MLA requests are often dealt with based on bilateral agreements with the neighbouring countries or on the basis of the EU applicable instruments or on the basis of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Brussels, 29 May 2000).

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.

   In general, requests for mutual assistance are sent or received by the central authorities (Ministry of Justice and Supreme Public Prosecutor´s Office), however in case the judicial authority competent for the specific request is identified in the requested State, the request may be sent directly to such authority. However, there is often a practical problem that it is not possible to identify the competent judicial authority to which the MLA request could be sent directly.

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.

   Not identified.

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?

   Judicial authorities of the Czech Republic have conducted several video conferences as a requested country and also as a requesting country. The only problems encountered were the problems of a technical or linguistic nature.

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

   Usually the police authorities are exchanging the spontaneous information. Judicial authorities (courts or public prosecutor´s offices) registered minimum cases.

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

   No experience.

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 par. 3 of ETS No.182 is respected, when the MLA request consisting of delivery of documents is being prepared, i.e. the documents are translated into the language that the addressee understands or it is indicated that translation is not attached because it is believed that addressee understands the language in which the documents were made.

   In case the MLA request consisting of delivery of documents is received and the person rejects to receive it due to the lack of translation, MLA request is returned back with mentioning the reasons, for which the person concerned rejected to take over the documents.

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.

    Service of documents by post directly to the person in another State can be chosen in some cases, however it has not become a usual practice.

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.

    No experience identified.

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

    Judicial authorities (public prosecutor´s offices) have concluded several JIT agreements on the basis of Article 20 of ETS No. 182. Article 20 is being used in relation to the Non-EU Member States (so far agreements on creation of JITs have been concluded with Switzerland, Serbia and Moldova).

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

    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.

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.

    Czech Republic has not made a reservation by virtue of Article 33 par. 2.

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

    No other comments.

## Denmark / Danemark

If your country is not a Party to this Protocol

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

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?

If your country is a Party to this Protocol

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?

   Denmark does not have specific experience with this particular rule.

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.

   It is the opinion of the Office of the Director of Public Prosecutions that direct communication between competent authorities is a benefit for the prompt execution of a request, and that lines of communications embracing the growing technological advancement enhance this benefit.

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.

   In a very limited number of cases, the Danish authorities have received requests that were slightly unfamiliar, for example the presence of a prosecutor during a police interrogation. To our knowledge, we have not received requests that were not in conformity with our national principles, and thus, no such requests have been denied.

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?

   Please note that Denmark has made a reservation concerning the hearing by videoconference of suspected or accused persons, cfr. Article 9. As a consequence, Denmark has also not issued such requests.

The experience of telephone and videoconference is extremely limited pursuant to the Second Protocol as most requests are received and issued pursuant to the EU-convention. However, Denmark has made an effort to execute the few requests received, sometimes obstructed by different technical difficulties.

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

   No.

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

   N/A

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.

   The provisions are applied as written. There is no distinction between direct transmission and transmission between central authorities.

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.

    Service by post is not usual practice, neither nationally nor in cross-border cases, as 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.

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.

    Regarding article 17 and 18, please note that all countries bordering Denmark are EU and Schengen members, and that such special investigative techniques are handled according to the rules in the Schengen Convention.
    The Office of the Director of Public Prosecutions is not aware of any investigations having taken place according to article 19.

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

    No.

13. Have you encountered any other legal or practical obstacle in the application of ETS 182? Please explain.
    No.

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.

    N/A

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

    No.

## Finland / Finlande

If your country is not a Party to this Protocol

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

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?

If your country is a Party to this Protocol

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?

   No cases so far.

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.

   We have not seen a noticeable change to the old practises.

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.

   No cases so far.

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?

   We have requested a few video conferences to hear witnesses and defendants. Emails needed to be exchanged, but ultimately they all succeeded. As a requested state we have organized a few witness examinations by video without any problems.

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

   Not happened yet.

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

   No experience in restitution.

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 has remained a dead letter; service of documents is still routed through the MOJ, both in and out, with the usual translation requirements.

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.

    See nr 9.

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.

    We do not apply articles 17 and 18 at all and article 19 only in a limited manner, no experiences.

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

    Never

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

    Not really obstacles, just minor difficulties that have been cleared with email exchanges.

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.

    No, not at this stage anyway.

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

# France

Si votre pays n'est pas Partie à ce Protocole

1. Si votre pays n'est pas Partie à la STE n° 182, la ratification de celle-ci est-elle envisagée ? Veuillez expliquer.

2. Pourriez-vous faire part de votre expérience concernant l'application des questions régies par les articles 16 à 20 de la STE n° 182 sur la base d'autres instruments ou traités bilatéraux ou multilatéraux ?

Si votre pays est Partie à ce Protocole

3. Quelle a été votre expérience, en tant qu'Etat requérant et en tant qu'Etat requis, en ce qui concerne l'entraide mutuelle relative à une procédure engagée par des autorités administratives dans le cadre défini par l'article 1 paragraphe 3 de la STE n° 182?

   L'autorité centrale française n'a pas été confrontée à ce type de demande, ni en tant qu'Etat requis ni en tant qu'Etat requérant.

4. Votre pays a-t-il retiré des avantages des nouvelles voies et méthodes de communication mentionnées à l'article 4 de la STE n° 182? Veuillez expliquer l'ampleur et la nature des avantages.

   L'article 4 du deuxième protocole additionnel permet notamment la transmission directe des demandes d'entraide d'autorité judiciaire à autorité judiciaire, même hors le cas d'urgence.
   Si cette disposition devrait se révéler très efficace en vue d'accélérer la transmission des demandes d'entraide, force est de constater que certains Etats restent réticents à l'application de cette disposition et continuent à solliciter systématiquement la transmission de la demande d'entraide via leur autorité centrale. C'est donc ce canal de transmission qui est maintenu avec ces Etats, nonobstant l'article 4 du deuxième protocole additionnel.

5. Avez-vous eu affaire à des demandes d'entraide comprenant des formalités ou des procédures qui sont inhabituelles dans votre droit, ou dans celui de l'Etat requis (article 8 STE n° 182) ? Le cas échéant, veuillez expliquer si les demandes ont abouti ou pas.

   Il est parfois sollicité dans les demandes d'entraide françaises que les auditions à l'étranger se fassent en présence d'un avocat en vue de respecter la procédure pénale française ou encore que soient respectés les droits dont bénéficie en France une personne à qui sont notifiées des charges.

Le magistrat mandant français est parfois sinon sollicité par certains Etats, afin de respecter un certain formalisme ou par exemple de fournir un certificat par lequel il s'engage à respecter le principe de spécialité.

Les formalités procédurales particulières sont respectées, dès lors qu'elles ne contreviennent pas aux règles nationales d'ordre public.

6. Quelle a été votre expérience en ce qui concerne l'audition de suspects, d'accusés, de témoins et d'experts par vidéoconférence ou conférence téléphonique (articles 9 et 10 de la STE n° 182) en tant qu'Etat requérant ? Et pour les organiser en tant qu'Etat requis ?

   Nous ne sommes pas en mesure de faire un retour d'expérience concernant les auditions par téléconférence qui sont peu sollicitées.

   Les demandes d'audition par vidéoconférence sont plus fréquentes. L'autorité centrale est surtout sollicitée en amont de leur mise en place afin de répondre à des questions juridiques.

7. Avez-vous souvent reçu ou envoyé des informations spontanées sur le fondement de l'article 11 de la STE n° 182? Veuillez expliquer votre expérience à cet égard.

   Le flux est très faible.

8. Quelle est votre expérience en ce qui concerne l'application de l'article 12 de la STE n° 182 ?

   Ce type de restitutions apparaît peu sollicité.

9. Comment appliquez-vous les dispositions de l'Article 15 de la STE n° 182 concernant la langue des actes de procédure et des décisions judiciaires à remettre ? Faites-vous une distinction entre les cas de transmission directe et de transmission par les autorités centrales ? Merci d'expliquer votre expérience à cet égard.

   Lorsque les actes étrangers sont transmis sans être accompagnés d'une traduction, l'autorité centrale fait application du point 3 de l'article 15 qui énonce que « *nonobstant les dispositions de l'article 16 de la Convention, si l'autorité qui est à l'origine des documents sait, ou a des raisons de considérer, que le destinataire ne connaît qu'une autre langue, les documents, ou au moins les passages les plus importants de ceux-ci, doivent être accompagnés d'une traduction dans cette autre langue ».*

   L'autorité centrale n'est pas en mesure d'indiquer les pratiques des juridictions sur ce point en cas de transmission directe.

10. L'envoi direct par voie postale d'actes de procédure et de décisions judiciaires à des personnes qui résident sur le territoire d'un autre Etat Partie (article 16 de la STE n° 182) est-il devenu une pratique courante ? Veuillez expliquer.

L'autorité centrale n'est pas en mesure de fournir des statistiques sur le sujet.

11. Quelle a été votre expérience dans l'application des techniques spéciales d'enquête mentionnées aux articles 17, 18 et 19 de la STE n° 182, en qualité tant de Partie requérante que de Partie requise ? Veuillez décrire votre expérience.

    Les mesures d'observation transfrontalière ou de livraisons surveillées portées à la connaissance de l'autorité centrale ne sont pas habituellement sollicitées par les autorités judiciaires françaises ou mises en application en France sur le fondement de ces articles (plutôt sur le fondement des instruments de l'Union européenne ou de la zone Schengen).

    Plusieurs infiltrations ont déjà été autorisées par l'autorité centrale française sur le fondement de la STE n°182.

12. Vous est-il déjà arrivé d'organiser une ECE (équipe commune d'enquête) sur le fondement de l'article 20 de la STE n° 182? Le cas échéant, veuillez expliquer votre expérience.

    Deux ECE ont été signées par la France sur le fondement de l'article 20 de la STE n°182.

    Un protocole-cadre d'accord en vue de la conclusion d'ECE a été également été signé par la France en octobre 2016 avec le Serbie sur le fondement de la STE n°182.

13. Vous êtes-vous heurté à d'autres obstacles d'ordre juridique ou pratique dans l'application de la STE n° 182 ? Veuillez expliquer.

    /

14. Si, en vertu de l'article 33 paragraphe 2, votre pays a formulé des réserves à l'égard des articles 16, 17, 18, 19 ou 20 de la STE n° 182, la levée (partielle ou totale) de ces réserves est-elle envisagée ? Veuillez expliquer.

    La France a formulé une réserve, le paragraphe 2 de l'article 17 n'est pas appliqué.

15. Avez-vous d'autres observations ou propositions à formuler en ce qui concerne la STE n°182?

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## Germany / Allemagne

If your country is not a Party to this Protocol

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

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?

If your country is a Party to this Protocol

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?

   Germany has not gained any experience, as a requesting state, with requests for mutual assistance that concern offences for which administrative authorities bring proceedings.

   Where Germany receives such requests for mutual assistance, it can be reported that Switzerland is the state primarily submitting such requests. The lion's share of such requests concerns administrative traffic offences and is targeted at identifying and examining the responsible drivers.

   In nearly all of the cases, these requests are completed without any problems. The sole aspect to be noted is that in isolated instances, it is not entirely clear from the request to which extent the party affected by the measure is already considered an accused party, or an affected party, under the laws of the requesting state.

   Moreover, some of these requests, and the direct channel of communication between the judicial authorities that is opted for in their regard, are not based on ETS No. 182; instead, they are based on Article I and VIII paragraph 1, first sentence, of the Treaty of 13 November 1969 between the Federal Republic of Germany and the Swiss Confederation to supplement the European Convention on Mutual Assistance in Criminal Matters, respectively on Article 49 letter a), Article 53 paragraph 1 of the Convention implementing the Schengen Agreement.

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.

   All parties involved in Germany welcome the new channels of communication. Thus, it is in particular the communication by telephone or using electronic means that enables streamlined and effective cooperation, this applies specifically where follow-up questions or supplementations regarding requests already submitted are concerned. They regard as an advantage the fact that – to a certain degree – the strict application of time-consuming

formal regulations has been dispensed with. That having been said, there is a degree of uncertainty in connection with the options available for transferring mutual assistance matters electronically in a manner compliant with data protection requirements, depending on the substance concerned and the degree of protection involved. The latter aspect has meant that in individual cases, electronic means of communication were not used.

Germany regards it to be an absolute requirement, in connection with requests transmitted electronically, that the addressee transmit a confirmation of receipt (as is regularly stipulated in the event of European Investigation Orders).

It should be noted that Germany has declared a reservation pursuant to Article 4 paragraph 8 letter b) ETS No. 182 to the effect that, unless the case is a matter of urgency, requests are to be addressed to the Federal Office of Justice (Bundesamt für Justiz).

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.

Experience has been gained insofar as in repeated instances, incoming requests have specified that documents be served in person, respectively that certain acts of legal assistance be documented in writing, such as the information provided to parties affected as concerns their specific rights. To the extent possible, these requests are taken into account by issuing the corresponding instructions to the executing investigators.

By contrast, there has been the case of a request being refused, for example, which request was directed at forcibly bringing in an accused party for examination by the public prosecutor, where the accused had previously declared that he was not going to make any statements.

Likewise, it can be reported that, for example, the regulations applying to the instructions issued to witnesses and accused parties under the law of some State parties differ significantly from the instructions in place in Germany. Thus, a party to be examined who would be considered an accused party in Germany would have to be placed under instructions as a witness under other law, since in that jurisdiction, the status as accused must initially be made known to the party by way of an order. The instructions are issued by the competent police precinct without this posing any problem. This is supplemented by following the regulations applying to the instructions issued to accused parties as valid in Germany.

As concerns outgoing requests, Germany can report that coercive actions it has sought to have performed, for example searches in the case of violations of maintenance obligations, were refused by the United Kingdom and the Netherlands, while, by contrast, requests for hearings involving the accused person were complied with.

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 organizing them as a requested state?

   Practitioners mainly report of positive experiences gained with hearings by video conference, both in the context of requests submitted and requests received. In numerous cases, performing hearings by video conference has proved to be a practical solution and in the meantime has become a standard tool in the field of mutual legal assistance.

   By way of complying with Article 9 paragraph 2 ETS No. 182, the Federal Republic has declared that pursuant to the basic principles of its legal order, hearing witnesses and experts by video conference is something that can be done only voluntarily. Nonetheless, although accused persons and witnesses are instructed that participating in such a video conference is voluntary, they have proved willing to make a statement using this technology in large numbers. In cases in which several video conferences are scheduled, involving different courts, for example, a video-conferencing schedule is attached for purposes of planning and coordination, which shows the sequence planned for the video conference.

   The difficulties arising are due in part to the technical compatibility of devices; however, it has been possible thus far to deal with the problems arising. Moreover, cases are known in which requests are received on very short notice and it is no longer possible to adhere to the time limits for summoning or in which there is no time to make organizational preparations.

   Irrespective of the technical means, it may be an issue that it is not possible to infer from incoming request whether an interrogation by the public prosecutor or by a judge is requested. This may affect how the testimony is taken and how it can be used in the proceedings of the requesting state.

   By contrast, no insights have been gained in Germany as regards examinations by telephone.

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

   First and foremost, spontaneous information will be provided by the police authorities. To the extent we are able to make a statement in this regard, spontaneous information is provided only in very rare cases in German practice. Where German public prosecutor's offices received spontaneous information, as a rule preliminary criminal investigations were initiated. Inasmuch as spontaneous information was sent out, at a minimum a notice was received that investigations had also been launched in the other State party. In more specific terms, it is known that proceedings involving links to Serbia, the Czech Republic, and Germany regarding an internationally active ring of Serbian jewel robbers are ongoing. In said proceedings, spontaneous statements made led to a joint meeting being held in Prague. In the meantime, one of the jewel robbers is being held in remand detention in Prague.

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

   To the extent it is possible to identify instances in which Article 12 ETS No. 182 is being applied, it can be said that these are isolated cases. In this context, there is the problem that the corresponding requests often will be based on facts and circumstances that can be considered embezzlement under German law – other than is the case under the laws of the requesting state – with the consequence that a bona fide purchase by third parties is conceivable. Also, the safekeeping and return of valuable works of art entail significant costs for insured transport, in addition to the costs of their storage.

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.

   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, in order to ensure the requests' streamlined processing, respectively prompt completion, and in order to pre-emptively deal with any follow-up questions on the part of the requested state. Accordingly, the application of Article 15 paragraph 3 ETS No. 182 can be considered usual practice in Germany.

   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 (in keeping with the declaration made by Germany regarding Article 16 paragraph 2 of the European Convention on Mutual Assistance in Criminal Matters). Inasmuch as requests are received in which the document to be served has not been translated, the courts will nonetheless approve the service of such document and perform it – as the case may be, after having coordinated with the Land ministries of justice –, even in the event the requesting state has not yet ratified ETS No. 182.

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.

    Germany has ruled out the application of Article 16 ETS No. 182; as a consequence, 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. German practitioners regard the number of received requests for mutual assistance to be on the decline that are submitted solely for the purpose of obtaining service of procedural documents.

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.

On some occasions, special investigative techniques are applied in the form of cross-border observations pursuant to Article 17 ETS No. 182. Such observations and controlled transports are performed, for example, in the case of stolen vehicles being trafficked across the border with Poland, based on agreements in place between Germany and Poland; however, this is done only for as long as the vehicle transport does not leave the border area. No special incidents are known in this context, nor have any special insights been gained in individual cases.

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

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 investigation team that has enjoyed particular success and that is praised by German investigation officers as an example for its "excellent cooperation" was formed with Serbia to deal with the field of organised crime. In the context of these investigations, numerous residences were searched and seven suspects were arrested. The measures were previously coordinated by the German and Serbian heads of the joint investigation team; in this context, the exchange of experience and knowledge with experienced investigation officers contributed to making the investigative process a success. The parties in both states wish to continue this form of collaboration, respectively to further expand it.

Further joint investigation teams were also formed in relation to the Netherlands, Poland, Lithuania or Bulgaria. They have resulted in much more flexible action than would have been possible in the context of traditional mutual legal assistance.

Other joint investigation teams were instituted based on Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

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

No legal or practical obstacles in the application of ETS No. 182 in other respects were mentioned.

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.

    The current experience has not yet led Germany to considering this.

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

    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.

## Greece / Grèce

If your country is not a Party to this Protocol

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

   Greece is not a party to the Second Protocol to the MLA Convention 1959. Consequently, answering to your questions, please be informed of the following:

   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.

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?

   As to Art. 16 of the Second Protocol: Service by post, as provided under art. 16, is commonly applied under Schengen Agreement 52 par. 1 between our country and other Member-States of Schengen Area without any particular problems.

   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."

## Ireland / Irlande

If your country is not a Party to this Protocol – Not applicable to Ireland

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

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?

If your country is a Party to this Protocol

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?

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

   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:

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.

   It has been the experience of the Central Authority for Mutual Legal Assistance in Ireland 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. The requesting authority must give an assurance that any evidence supplied will not be used, without the Minister's consent, for a purpose other than that permitted by the relevant international instrument or specified in the request and that the evidence will be returned when no longer required unless the Minister indicates otherwise. In addition, an undertaking must be given that a defendant will be able to challenge any evidence supplied by the Irish authorities if the material is to be used at his/her trial in the requesting State.

Once clarification is provided in relation to our procedural requirements, a request is processed successfully in most cases.

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?

   In Ireland, 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 most notable being:

- A period of at least 8-12 weeks' notice for administrative and practical purposes to arrange the hearing of a witness by videolink.
- The submission of a statement outlining why it is not desirable or practicable for the witness to give evidence in person.

   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.

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

   There are no experiences to share.

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

   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.

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.

   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.

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.

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.

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.

In accordance with Article 33 Para. 2 Ireland does not accept Articles 17 and 19 .
Section 88 - 90 of the Criminal Justice (Mutual Assistance) Act 2008 provides for Controlled Deliveries. Section 90 provides for the controlled delivery to be made 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 where controlled deliveries have been requested in the circumstances outlined in this Article. In such circumstances, a formal JIT is generally established which clearly outlines the roles and responsibilities of the Organisations in each Member State, and provides for an exchange of officers to ensure that procedures are adhered to and for the seamless transfer of information/intelligence etc., 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.

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

An 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.

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

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.

    Not at this time

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

## Latvia / Lettonie

If your country is not a Party to this Protocol

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

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?

If your country is a Party to this Protocol

Latvia has joined to the mentioned Protocol.

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?

   The Prosecution Office has no experience in relation with the mutual assistance in cases instituted by the administrative authorities.

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.

   Definitely it is great advantage, because more rapid and efficient exchange of information and documents is possible.

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.

   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.

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?

   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.

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

   The Prosecution Office often receives the spontaneous information according to the 11 Article of ETS 182. On average 5-10 cases per month. Sending to other countries is rare. 3-5 cases per year.

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

   The assets may be returned if its legal possessor is identified and the assets are at the disposal of a person directing the proceedings.

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.

   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. The most often reason is that storage deadline in a specific post office has expired. Then documents are sent repeatedly through the diplomatic channels.

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.

    Yes. It is possible to send the documents by post.

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.

    The Prosecution Office is not competent authority in these smatters. The State Police is responsible for it.

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

    Latvia is setting up and participating in the Joint Investigation Teams with the EU Member States. The legal ground is the Convention of 2000.

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

    We have not encountered any practical and legal obstacles.

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.

    No.

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

    No.

## Republic of Moldova / République de Moldova

If your country is not a Party to this Protocol

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

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?

   If your country is a Party to this Protocol
   Republic of Moldova is party to the Second Additional Protocol since 01/12/2013 (entry in force).

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?

   We don't have such experience, in part because we didn't receive such MLA requests.
   According to national legislation, MLA requests can be issued only in the criminal cases. (as regards MLA in criminal matters).

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.

   Usually, the requests for international legal assistance on criminal matters are transmitted via the Ministry of Justice or the General Prosecutor's Office.
   In urgent cases, MLA requests are send through fax or e-mail, and originals by post.
   The main benefit from the new channels and methods of communication is that the MLA requests get faster to the competent authority.

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.

   No.

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?

   No.

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

   No, we didn't receive or send such information.

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

   We don't have such experience so far.

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.

   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 that the MLA request had been received.

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.

    We don't have such practice.

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.

    We don't have experience in the application of special investigative techniques as mentioned under Articles 17 and 19 of ETS No. 182.

    We have had 2 incoming and one outgoing MLA requests regarding controlled delivery (art. 18 of ETS No. 182) so far. We didn't encountered any problems in the application of these special investigative techniques.

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

    We have had organised 10 JITs.
    - 7 of which with Romania, (on corruption, smuggling, putting into circulation of forged foreign values and helicopter accident).
    - one with Romania, Bulgaria and Lithuania on smuggling.
    - another with Romania and Great Britain on cybercrime.

- and one with Czech Republic on illegal circulation of narcotic or psychotropic substances or analogs thereof for the purpose of alienation and smuggling.

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

    There have been no problems so far.

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.

    Republic of Moldova hasn't made reservations to Articles 16, 17, 18, 19 or 20 of ETS No. 18.

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

    No.

# Monaco

Si votre pays n'est pas Partie à ce Protocole

1. Si votre pays n'est pas Partie à la STE n° 182, la ratification de celle-ci est-elle envisagée ? Veuillez expliquer.

   Depuis son adhésion au Conseil de l'Europe en 2005, la Principauté de Monaco est devenue Partie à un nombre important de conventions internationales, ce qui a suscité des efforts importants de la part des autorités. Ces efforts se poursuivent et l'étude de cet instrument destiné à faciliter la coopération judiciaire en matière pénale est en cours.

2. Pourriez-vous faire part de votre expérience concernant l'application des questions régies par les articles 16 à 20 de la STE n° 182 sur la base d'autres instruments ou traités bilatéraux ou multilatéraux ?

# Portugal

Si votre pays n'est pas Partie à ce Protocole

1. Si votre pays n'est pas Partie à la STE n° 182, la ratification de celle-ci est-elle envisagée ? Veuillez expliquer.

2. Pourriez-vous faire part de votre expérience concernant l'application des questions régies par les articles 16 à 20 de la STE n° 182 sur la base d'autres instruments ou traités bilatéraux ou multilatéraux ?

Si votre pays est Partie à ce Protocole

Question préalable : le Portugal est État Partie du IIème Protocole Additionnel. Pourtant son expérience est limitée une fois que le volume de sa coopération internationale est engagé avec des États de l'Union Européenne, dont la Convention du 29 mai a les mêmes solutions légales que le IIème Protocole Additionnel.

3. Quelle a été votre expérience, en tant qu'Etat requérant et en tant qu'Etat requis, en ce qui concerne l'entraide mutuelle relative à une procédure engagée par des autorités administratives dans le cadre défini par l'article 1 paragraphe 3 de la STE n° 182?

La seule expérience dont on a constance combine une procédure de l'article 3, avec une transmission directe de la demande d'entraide et l'objet de la demande est une vidéo conférence. La demande a été adressée aux autorités suisses et il n'y a pas de réponse à souligner, due la transmission très récente de la demande.

4. Votre pays a-t-il retiré des avantages des nouvelles voies et méthodes de communication mentionnées à l'article 4 de la STE n° 182? Veuillez expliquer l'ampleur et la nature des avantages.

Sans doute. La voie directe pour la transmission de demandes d'entraide est utilisée par les autorités portugaises en ce qui concerne leur coopération très abondante avec les autorités suisses. En ce qui concerne d'autres États cette possibilité n'est pas utilisé du l'absence d'information sur les coordonnées des autorités judiciaires compétentes pour recevoir et donner exécution aux demandes d'entraide. Donc, une solution comme l'Atlas judiciaire Européen ou comme l'Elorge suisse serait bienvenue.

5. Avez-vous eu affaire à des demandes d'entraide comprenant des formalités ou des procédures qui sont inhabituelles dans votre droit, ou dans celui de l'Etat requis (article 8 STE n° 182) ? Le cas échéant, veuillez expliquer si les demandes ont abouti ou pas.

Des formalités spéciales en ce qui concerne, par exemple, la preuve à produire en audience sont quelque fois requises. On n'a pas constance que ça ait été une objection à l'exécution de la demande.

6. Quelle a été votre expérience en ce qui concerne l'audition de suspects, d'accusés, de témoins et d'experts par vidéoconférence ou conférence téléphonique (articles 9 et 10 de la STE n° 182) en tant qu'Etat requérant ? Et pour les organiser en tant qu'Etat requis ?

   Le système portugais ne prévoit pas l'audition par conférence téléphonique. En ce qui concerne les vidéo conférences, très fréquentes dans le quotidien des autorités portugaises, elles font objet de demandes d'entraide adressées aux autorités étrangères, nommément suisses. On identifie une certaine résistance à l'utilisation de ce moyen d'exécution des CRIs, pourtant efficace et qui permet que la preuve obtenue soie intégrée dans la procédure sans problèmes de validité de preuve. On remarque, aussi, des problèmes de connexion.

7. Avez-vous souvent reçu ou envoyé des informations spontanées sur le fondement de l'article 11 de la STE n° 182? Veuillez expliquer votre expérience à cet égard.

   L'autorité centrale n'a aucune information à ce sujet ; mais a niveau des autorités judiciaires il y des situations de transmission spontanée d'information, nommément en matière d'investigation de crimes financiers.

8. Quelle est votre expérience en ce qui concerne l'application de l'article 12 de la STE n° 182 ?

   Il n'y a pas d'expérience connue.

9. Comment appliquez-vous les dispositions de l'Article 15 de la STE n° 182 concernant la langue des actes de procédure et des décisions judiciaires à remettre ? Faites-vous une distinction entre les cas de transmission directe et de transmission par les autorités centrales ? Merci d'expliquer votre expérience à cet égard.

   Les autorités portugaises sont encouragées à utiliser cet article pour maintenir en portugais les documents ou pièces procédurales dont la notification à des sujets est l'objet de la demande, en ce qui concerne les ressortissants portugais résidant dans l'État requis. Quand l'envoy des pièces à notifier en portugais est bien expliqué, ce qui n'est pas toujours le cas, on n'identifie pas de problèmes à cet égard.

10. L'envoi direct par voie postale d'actes de procédure et de décisions judiciaires à des personnes qui résident sur le territoire d'un autre Etat Partie (article 16 de la STE n° 182) est-il devenu une pratique courante ? Veuillez expliquer.

    Oui, toujours quand le Code de Procédure Pénale portugais le permet, ce quoi n'est pas toujours le cas. Il y a beaucoup de cas ou une notification par contact personnel est obligatoire, ce qui emmène à des demandes d'entraide.

11. Quelle a été votre expérience dans l'application des techniques spéciales d'enquête mentionnées aux articles 17, 18 et 19 de la STE n° 182, en qualité tant de Partie requérante que de Partie requise ? Veuillez décrire votre expérience.

    Il n'y a pas d'information sur des expériences concernant ces formes de coopération, par application du Protocole Additionnel.

12. Vous est-il déjà arrivé d'organiser une ECE (équipe commune d'enquête) sur le fondement de l'article 20 de la STE n° 182? Le cas échéant, veuillez expliquer votre expérience.

    Oui, il y a une JIT en place avec les autorités suisses qui produit des résultats positifs.

13. Vous êtes-vous heurté à d'autres obstacles d'ordre juridique ou pratique dans l'application de la STE n° 182 ? Veuillez expliquer.

    Non, due l'expérience résiduelle on n'a pas d'autres commentaires à faire.

14. Si, en vertu de l'article 33 paragraphe 2, votre pays a formulé des réserves à l'égard des articles 16, 17, 18, 19 ou 20 de la STE n° 182, la levée (partielle ou totale) de ces réserves est-elle envisagée ? Veuillez expliquer.

    Il n'y a pas de réserves de la part du Portugal. Seulement des déclarations.

15. Avez-vous d'autres observations ou propositions à formuler en ce qui concerne la STE n°182?

    Non.

## Romania / Roumanie

If your country is not a Party to this Protocol

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

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?

If your country is a Party to this Protocol

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?

   We found no experience in this respect.

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.

   To our view, accepting and executing requests received by electronic or other means of telecommunication is one of the most significant changes brought by ETS 182 with a real and concrete impact at the practical level.

   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.

   Overall, the advantages of using emails have been easily seen - delivered extremely fast when compared with the poste, inexpensive, serve as a soft copy, date and time automatically stamped, notification if a message was not delivered/was received/read, involving several persons ( to and cc), and others. Fax as a mean of communication presents several benefits too (although when using it we have usually encountered situations when even notified as accepted, the fax machine was not turned on or was not actually working).

   These advantages have a direct impact on the effectiveness of the criminal proceedings by improving the efficiency and speed of the process (investigation/trial).

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.

Acting 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.

For instance, in terms of evidence gathering, according to our Criminal Procedure Code hearing of persons (suspects, accused, victims, civil parties, parties with civil liability, witnesses and experts) is subject to specific procedures to be followed like standard set of questions (apart from the one related to the substance of the case), formal notification of the rights and obligations at the begging of the hearing e.g. right of suspect/accused person to remain silent in respect of any of the facts or circumstances about which he or she is asked, or, on the occasion of the first hearing, a victim has to informed of the fact that, in the event that the accused person is deprived of freedom or convicted to a custodial sentence, she or he can be informed of his/her release in any manner, or right of witnesses to avoid self-incrimination.

Further on, in terms of witness, during the criminal investigation and the trial, a witness is requested to take an oath or to give a solemn declaration. The text of the oath is as follows: "I swear to tell the truth and to not conceal anything of what I know. So help me God!" The reference to divinity contained in the oath shall be changed depending on the religious faith of witnesses. While taking an oath, with the exceptions imposed by the religious belief, witnesses shall keep their right hand on a cross or on the Bible. If a witness chooses to give a solemn declaration, its text shall be as follows: "I undertake to tell the truth and not to conceal anything of what I know." Further on, there might be cases when hearing is to take care in the presence of a lawyer (mandatory in accordance with the Criminal Procedure Code) and there when hearing the person the requested state needs to assure the presence of the lawyer.

Acting 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).

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?

   Acting 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. We have succeeded to arrange such hearings even in very short period of time (within 3 weeks) and also to coordinate and conduct multiple hearings by different RO executing authorities in the same day (same criminal proceeding in the requesting state, hearing of several witnesses located in Romania in different counties).

   Acting 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 meet 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.

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

   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 case having a trans-border dimension the process of spontaneous information is taking place more frequently.

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

   We found no experience in this respect.

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.

   When using Article 15, it is not the channel of communication that makes the distinction, but the language the addressee speaks/knows. Thus, 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).

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.

    Having procedural documents directly addressed to persons living in another state it is a usual practice only if the other state party applies Article 16. (e.g. there are states party excluding Article 16 from the scope of application, or involving central authorities).

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.

    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).

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

    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.

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

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.

    We did not make any reservation to any of the Articles listed above. However we did make declarations in accordance with Article 17 (4) and Article 18 (4) and these declarations needs to be amended as they do not reflect the current state of play (legislation) in Romania.

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

## Slovakia / Slovaquie

In the Slovak Republic the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters came into force on 1 May 2005.

If your country is not a Party to this Protocol:

1. If your country is not a Party to ETS No. 182, is its ratification being considered? Please explain.
2. Could you please share your experiences regarding the application of the issues covered by Articles 16 to 20 of ETS No. 182 on the basis of other bilateral or multilateral instruments or treaties?

If your country is a Party to this Protocol:

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?

   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.

   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.

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.

   The stated 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.

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.

   The Slovak Republic does have experience with requests of foreign authorities on following the formalities and procedures according to their legal order. The stated provision is practiced also in the requests of the Slovak authorities. If the requested Party does not comply with such formalities and procedures, it may lead to a procedural inadmissibility of the act in further proceedings (e.g. insufficient instruction, impossibility of the counsel to participate on the acts). 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.
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.

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?

   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 occured while implementing this act.

   Regarding the telephone conference, there was no hearing carried out via this medium by the Slovak authorities. The national legislation of the Slovak Republic does not recognize a telephone conference.

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

   The stated provision is practiced only rarely by the judicial authorities, as in passive form as well as in active form. The Slovak Republic has no negative experience with the procedure regarding this Article.

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

   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.

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.

   The Slovak Republic does make a distinction between a direct transmission of a document to its addressee and a transmission on 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.

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.

    The Slovak Republic has implemented a reservation to the stated Article and therefore has 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 within the practical procedures regarding the reception (e.g. unreturned affidavit of service, therefore the reception becomes legally ineffective).

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.

    The Slovak Republic has implemented a reservation to Articles 17 and 19 and therefore has excluded their application.

    Regarding the Article 18 of the ETS No. 182, the Slovak Republic has 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 experience occuring during the application of the stated provision that would deserve particular attention.

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

    The Slovak Republic has implemented the reservation to the Article 20 ETS and therefore has excluded its application. All JIT where the Slovak Republic is a contracting party were established on the basis of Article 13 of MLA 2000.

13. Have you encountered any other legal or practical obstacle in the application of ETS No. 182? Please explain.

    As a practical obstacle we consider the nonexistence of the contact addresses of the competent judicial authorities, as was already aforesaid.

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.

As it was above-mentioned, the Slovak Republic has implemented reservations to the Articles 16, 17, 19 and 20 of ETS No. 182. From the title of central authorities there is being considered a partial withdrawal of these reservations to the stated Articles.

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

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 / Slovénie

If your country is not a Party to this Protocol (not applicable)

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

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?

If your country is a Party to this Protocol

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?

   Slovenia made a declaration pursuant to the Article 27 of the Protocol, that the administrative authorities for the purpose of the Article 1, paragraph 3, of the European Convention on Mutual Assistance in Criminal Matters are the authorities that, in accordance with national legislation of the Republic of Slovenia, carry out supervisory tasks over the implementation of regulations and are in this regard competent to make decisions about minor offences. Therefore in practice Slovenian administrative authorities are sending requests for mutual legal assistance to competent foreign authorities. The competent Slovenian authorities are also executing requests for MLA of foreign requesting administrative authorities in accordance with this article.

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.

   In our opinion this article brings a lot of benefits for criminal and administrative proceedings since it enables direct communication between competent judicial or administrative authorities which is fast and efficient.

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.

   Slovenian judicial authorities (courts and prosecutor offices) reported that there were requests (both incoming and outgoing) for legal assistance including formalities or procedures that were unfamiliar in jurisdiction of the executing state and that such requests were executed. In one outgoing case a Slovenian court reported that a request for hearing of a suspect by videoconference was not conducted since the legal order of a requested state enables only hearing of suspects which is conducted directly by the court.

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?

   Slovenian judicial authorities conducted many videoconferences on the basis of foreign MLA request. In the same time foreign judicial authorities executed almost all requests of Slovenian judicial authorities for conducting hearings of suspects, accused persons, witnesses and experts by video conferences. In two cases Slovenian courts reported that their requests for hearings of persons by videoconferences were not executed due to lack of technical equipment in the requested state.

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

   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. One of the prosecutor offices reported very efficient cooperation with prosecutor offices of the neighbouring country where spontaneous information and documents are exchanged during the meetings of the prosecutors. Exchanged information are often the basis for requests for mutual legal assistance.

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

   In Slovenia usually the return of articles obtained by criminal means to the rightful owners is conducted through police cooperation during pretrial criminal procedure. One of Slovenian prosecutor offices reported about successful case of direct cooperation with another prosecutor office of a member state of the EU, where a stolen car was successfully returned to its rightful owner. Slovenian courts already executed foreign requests for restitution of articles.

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.

   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 that 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.

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.

    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.

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.

    Slovenian 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 reported that an instrument of cross-border observation is conducted on the territories of neighbouring countries on the basis of bilateral and international legal instruments. They 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.

    Slovenian courts executed foreign requests regarding covert investigations, which were successful as persons who committed criminal offences were convicted after the pretrial and trial criminal procedure were conducted.

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

    Till now Slovenian prosecutor offices organized and cooperated in JITs with other member states of the European Union. The JITs were very successful in investigation of organized transnational crimes. Organization and functioning of the JITs was supported by representatives of Eurojust and Europol.

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

    No legal or practical obstacles in the application of the protocol were encountered. A practical obstacle is only a fact that there are no safe channels for exchange of documents between judicial authorities of different states, which are of confident or secret nature.

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.

    Slovenia has not made reservations to these articles.

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

    /

## Sweden /Suède

If your country is not a Party to this Protocol

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

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?

If your country is a Party to this Protocol

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?

*The Prosecution Authority:*
No experience known.

*The Central Authority for the international service of documents:*
So far, the Central Authority has not received any requests for service in administrative matters explicitly made under Article 1 para 3 of ETS No 182. Requests that would qualify as such, mostly emanating from German and Turkish courts, are being made under the 1959 Convention, ETS No.030.

However, it is hard to overestimate the importance of broadening the scope of ETS No 030 to administrative offences, as defined in Article 1 para 3 of ETS No 182, when it comes to cases where a Swedish administrative court needs assistance in serving procedural documents abroad. The Swedish Central Authority, as a general rule, recommends national administrative courts to apply this provision, similar to the one adopted in Article 3 para 1 of the EU Convention on Mutual Assistance in Criminal Matters (2000/C 197/01), when service has to be performed outside of the EU provided that the state in question is a party to ETS No 182.

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.

*The Prosecution Authority:*
No experience known.

*The Central Authority for the international service of documents:*

At times, additional delays and some confusion may arise when requests for service are initially being transmitted to the Ministry of Justice instead of being directly addressed to the County Administrative Board of Stockholm which is Sweden´s Central Authority for the international service of documents. Nevertheless, the fact that ETS No 182 expressly authorises direct contacts between concerned judicial authorities, including administrative authorities, can only be welcomed as facilitating and speeding up international legal cooperation.

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.

   *The Prosecution Authority:*
   Not in cases concerning this protocol but in cases under the EU convention of 2000 the occurrence of such problems are quite common. It is, e g, considered against Swedish *ordre public* to have suspects giving an oath on the truthfulness of their statements either in front of the police or in a criminal court. These problems can and will be dealt with pragmatically, that is, the requests will be fulfilled in adherence with the postulated provisions up to the point where it would not be possible to do so.

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?

   *The Prosecution Authority:*
   No experience in cases concerning this protocol but in cases under the EU convention, and also in older cases under the 1959 convention, this occurred and occurs infrequently. The major problems faced in practice are more of getting the connection, retaining the connection, having clear pictures and good sound rather than problems of legal nature.

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

   No. This kind of information is usually channeled on police levels.

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

   No experience.

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.

   *The Central Authority for the international service of documents:*

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).

National legislation (Chapter 33, 9§ of the Swedish Procedural Code) 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.

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.

*The Central Authority for the international service of documents:*
When approached, 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.

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.

*The Prosecution Authority:*
None under this convention, from time to time under the EU convention. There have been cases of ad-hoc-cooperation with states outside the EU concerning e g controlled deliveries within the 1959 conventions framework.

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

*The Prosecution Authority:*
No.

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

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.

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

*The Prosecution Authority:*

Sweden is a party to the Strasbourg 1959 convention and its two additional protocol. 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 EU conventions.

*The Swedish 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.

## Switzerland / Suisse

Si votre pays n'est pas Partie à ce Protocole

1. Si votre pays n'est pas Partie à la STE n° 182, la ratification de celle-ci est-elle envisagée ? Veuillez expliquer.

2. Pourriez-vous faire part de votre expérience concernant l'application des questions régies par les articles 16 à 20 de la STE n° 182 sur la base d'autres instruments ou traités bilatéraux ou multilatéraux ?

Si votre pays est Partie à ce Protocole

3. Quelle a été votre expérience, en tant qu'Etat requérant et en tant qu'Etat requis, en ce qui concerne l'entraide mutuelle relative à une procédure engagée par des autorités administratives dans le cadre défini par l'article 1 paragraphe 3 de la STE n° 182?

   In practice there are rarely administrative authorities asking for mutual legal assistance, although they have the same competences as law enforcement authorities.

4. Votre pays a-t-il retiré des avantages des nouvelles voies et méthodes de communication mentionnées à l'article 4 de la STE n° 182? Veuillez expliquer l'ampleur et la nature des avantages.

   Le contact direct entre autorités judiciaire est très utile. Il permet de gagner en efficacité, ce d'autant que l'on constate que certains Ministères de la justice mettent plusieurs mois avant de transmettre une demande d'entraide. Il sert particulièrement dans les cas urgents (bien que, dans les cas urgents, le contact direct était permis déjà avant le PA II).

   Le contact direct facilite le traitement des demandes d'entraide, l'autorité requise pouvant s'adresser directement à l'autorité requérante en cas de questions. Il semble apprécié des autorités de poursuite suisses. Il est régulièrement utilisé pour les demandes sortantes. Par ailleurs, sur la totalité des demandes reçues annuellement en Suisse, quasi la moitié des requêtes entrantes sont déposées directement auprès de l'autorité requise.

   Le contact direct entre autorités administratives (Art. 4(3) PA II) intervient très rarement, au point qu'on peut soupçonner que la possibilité pour les autorités administratives de déposer des requêtes judiciaires dans le sens de l'article 1(3) PA II n'est pas largement connue.

5. Avez-vous eu affaire à des demandes d'entraide comprenant des formalités ou des procédures qui sont inhabituelles dans votre droit, ou dans celui de l'Etat requis (article 8 STE n° 182) ? Le cas échéant, veuillez expliquer si les demandes ont abouti ou pas.

   Occasionally, countries request a seizure warrant/restraint order signed by a Swiss judicial authority in cases where a restraint of assets is sought, even though such order is not

stipulated by ETS No. 182. Usually, this is remedied by the requesting Swiss authority signing such order or by the requested foreign State waiving the requirement.

Some countries request a defense lawyer appointed by Swiss authorities be present during the interviews of defendants. Domestic legal assistance proceedings hardly ever require the presence of defense counsel. The requests can still be executed, as defendants usually hire defense lawyers voluntarily and at their own expense.

6. Quelle a été votre expérience en ce qui concerne l'audition de suspects, d'accusés, de témoins et d'experts par vidéoconférence ou conférence téléphonique (articles 9 et 10 de la STE n° 182) en tant qu'Etat requérant ? Et pour les organiser en tant qu'Etat requis ?

Video conference (article 9 of ETS 182):
Pour l'autorité requérante, l'audition par vidéoconférence représente un outil efficace d'audition, permet de garantir le droit de la défense à la confrontation directe et évite la multiplication d'auditions successives (148 CPP). Il garantit en outre que la preuve est directement administrée, et évite des erreurs de traduction.

Pour l'autorité requise par contre, il s'agit d'un outil lourd à utiliser, nécessitant une excellente coordination (tant technique que juridique) avec l'autorité requérante, ce qui impose notamment que les deux autorités puissent se parler préalablement à l'audition (ce à quoi certaines autorités requérantes, notamment judiciaires, sont réticentes). En particulier, la superposition de deux systèmes légaux différents est source d'incertitude et est susceptible de créer des vices de forme qui pourraient rendre le moyen de preuve inexploitable.

Par ailleurs, il existe en Suisse une incertitude juridique sur la compatibilité de cet outil avec le droit suisse. En particulier, lorsque l'audition a lieu pour un tribunal étranger, la procédure d'entraide suisse (décision de clôture + délais de recours) peut avoir pour effet d'interdire au tribunal étranger toute utilisation du témoignage pendant de nombreux mois – ce qui n'est pas forcément compatible avec le but même de l'institution de la vidéoconférence.

For this and other reasons, this measure is hardly used in Switzerland :

- As mentioned above, if the witness is heard for the first time, the immediate knowledge of the witness' statement may circumvent the legal remedies stipulated by Swiss law and infringe fundamental principles of domestic law.

- It is a subsidiary measure. The necessity of measure has to be motivated (art. 9 par. 1 and 3, see also explanatory report). Such motivation is normally missing.

- Most Swiss authorities lack the technical means needed for video conferencing.

- The rental costs for the equipment are often higher than the travel costs for the participants.

- The procedure to be followed is – due to Swiss law – quite complicated.

Therefore, the witness located in Switzerland is often asked to travel to the requesting State for interview. Alternatively, the requesting State is suggested to have the witness summoned in Switzerland and participate in the interview or at least to send the requested Swiss authority a detailed questionnaire of the foreseeable questions.

Nous pouvons ajouter que l'on a constaté à plusieurs reprises que des problèmes d'ordre technique ou procédural dans l'Etat requérant ont rendu impossible la vidéoconférence alors qu'elle était autorisée et que la procédure d'entraide avait été menée pour ce faire. Cela est passablement décourageant pour l'autorité qui exécute la demande.

Telephone conference (article 10 of ETS 182):

No practice so far, as this kind of assistance has not been sought.

7. Avez-vous souvent reçu ou envoyé des informations spontanées sur le fondement de l'article 11 de la STE n° 182? Veuillez expliquer votre expérience à cet égard.

Les autorités suisses envoient régulièrement à l'étranger des informations recueillies dans le cadre de leur propre enquête (115 fois en 2016). Il s'agit entre autre d'un outil efficace pour assurer la répartition et la coordination des procédures entre Etats. Cependant, tous les cas ne se fondent pas sur l'article 11 du PA II, vu que la loi suisse sur l'entraide internationale en matière pénale contient une base légale pour la transmission spontanée d'informations, permettant aux autorités suisses de partager de telles informations non seulement avec des Etats membres du PA II mais aussi avec les non-membres.

Par contre, la possibilité donnée à l'Etat récipiendaire par l'art 11 par. 4 STE d'être d'abord informé de la nature de l'information et des conditions posées par la Suisse s'avère contre-productive : l'Etat récipiendaire exige parfois un niveau de détail tel sur la nature de l'information à transmettre que cela revient à remettre l'information. L'usage extensif de cette réserve a donc un effet déterrent sur l'utilisation de cet article.

De plus, les réserves que certains pays ont ajouté à l'article 11 PA II (p.ex. de ne pas se soumettre aux conditions imposées en vertu des dispositions du paragraphe 2 de l'article 11 par la Partie qui fournit l'information) rendent sa mise en œuvre encore plus difficile.

La Suisse reçoit rarement des informations spontanées d'autres pays. Par exemple, elle n'a reçu de telles informations que dans deux cas en 2016.

8. Quelle est votre expérience en ce qui concerne l'application de l'article 12 de la STE n° 182 ?

Cette disposition n'a jamais été appliquée. En effet, la loi sur l'entraide permet à la Suisse d'appliquer cette mesure (art. 74a EIMP).

9. Comment appliquez-vous les dispositions de l'Article 15 de la STE n° 182 concernant la langue des actes de procédure et des décisions judiciaires à remettre ? Faites-vous une distinction

entre les cas de transmission directe et de transmission par les autorités centrales ? Merci d'expliquer votre expérience à cet égard.

La majorité des autorités suisses traduisent la demande et les actes essentiels dans la langue de l'Etat requis, pour autant qu'il l'exige.

Les autorités suisses reçoivent souvent des autorités requérantes les documents originaux (dans la langue de l'Etat requérant), ainsi qu'une traduction dans une des langues nationales (principalement en allemand ou en français). Il peut arriver que les autorités suisses reçoivent les actes de procédure ou décision judiciaires à notifier uniquement dans la langue du pays, toutefois, dans la majorité des cas, le destinataire parle la langue de l'Etat requérant car il en était généralement ressortissant. En outre, la demande de notification (traduite dans une des langues nationales) explique souvent sur quoi porte la décision ou l'acte à notifier, de sorte qu'il n'est pas nécessaire d'en demander la traduction. Cependant, il peut aussi arriver que les autorités requérantes manquent à leurs obligations d'envoi de la version traduite dans l'une des langues officielles de la Suisse, voire (mais plus rarement) de la version originale du document à notifier et que le destinataire ne parle pas la langue de l'état requérant. Les demandes de renseignements complémentaires provoquent parfois l'impossibilité de respecter les délais (dans les cas de notification de mandat de comparution notamment).

Il n'est pas fait de distinction entre les cas de transmission directe et de transmission par les autorités centrales.

10. L'envoi direct par voie postale d'actes de procédure et de décisions judiciaires à des personnes qui résident sur le territoire d'un autre Etat Partie (article 16 de la STE n° 182) est-il devenu une pratique courante ? Veuillez expliquer.

    L'envoi direct par voie postale d'actes de procédure et de décisions judiciaires à des personnes qui résident sur le territoire d'un autre Etat partie est une pratique courante dans la plus part des cantons, particulièrement vers les Etats limitrophes.

    Cependant, un canton nous a signalé qu'une sérieuse difficulté se profile à l'usage, lors d'envois vers des pays dont les services postaux ne fournissent pas les accusés de réception des courriers. La personne concernée a ainsi tout loisir de prétendre n'avoir rien reçu et demander par conséquent la restitution d'un délai. A terme, si de tels cas devaient de multiplier, la sécurité du droit voudra que cette simplification des envois soit abandonnée en pratique pour suivre la voie de la notification par la voie de l'entraide, plus longue et plus coûteuse. L'établissement d'une liste des pays qui permettent l'obtention, par l'autorité émettrice, de la preuve de la remise postale au destinataire simplifierait grandement le choix de la méthode de notification à utiliser.

11. Quelle a été votre expérience dans l'application des techniques spéciales d'enquête mentionnées aux articles 17, 18 et 19 de la STE n° 182, en qualité tant de Partie requérante que de Partie requise ? Veuillez décrire votre expérience.

    Art. 17 cross border observations

Art. 282 ff. Swiss Criminal Procedure Code:
Covertly observation of persons and property without the use of technical surveillance devices can be ordered by police, only their continuation requests authorization by the public prosecutors in the frame of mutual legal assistance.

Art. 18 controlled delivery

Controlled deliveries are not explicitly stipulated in the Swiss Criminal Procedure Code but Swiss authorities are able to execute such requests based on art. 18 IMAC. In practice, controlled deliveries will be handled based on international (bilateral) police agreements with our neighboring countries.

Art. 19 covert investigations

In practice, covert investigations were used in complex cross-border criminal proceedings with Germany.

Remarque: En Suisse romande, ces techniques spéciales d'enquête ne sont à priori peu ou pas utilisées.

12. Vous est-il déjà arrivé d'organiser une ECE (équipe commune d'enquête) sur le fondement de l'article 20 de la STE n° 182? Le cas échéant, veuillez expliquer votre expérience.

L'ECE est un outil d'enquête très efficace et utilisé en particulier avec les Etats voisins dans les procédures pour lutter contre la criminalité économique transfrontalière, le terrorisme et le crime organisé.

Le recours à cet outil nécessite toutefois une excellente compréhension du rôle de chaque partie, des possibilités et des limites légales, ainsi qu'une parfaite coordination des poursuites pénales. L'existence d'un rapport de confiance mutuel élevé entre les membres de l'ECE est un préalable nécessaire à l'établissement d'un ECE.

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.

En cours :
Le canton de Vaud est en cours d'élaboration d'une ECE avec la Roumanie avec l'appui du procureur de liaison suisse auprès de EUROJUST / OFJ / EUROJUST.

Expériences faites :
JIT avec la France dans un cas de criminalité ordinaire (cambriolages en série).
JIT avec le Portugal dans une affaire d'escroquerie, faux dans les titres, gestion déloyale, abus de confiance.

2 JIT avec la France en matière de terrorisme.

Les expériences sont positives.

13. Vous êtes-vous heurté à d'autres obstacles d'ordre juridique ou pratique dans l'application de la STE n° 182 ? Veuillez expliquer.

    Non.

14. Si, en vertu de l'article 33 paragraphe 2, votre pays a formulé des réserves à l'égard des articles 16, 17, 18, 19 ou 20 de la STE n° 182, la levée (partielle ou totale) de ces réserves est-elle envisagée ? Veuillez expliquer.

    Aucune réserve formulée.

15. Avez-vous d'autres observations ou propositions à formuler en ce qui concerne la STE n°182?

    De nombreux pays importants de l'Union européenne n'ont pas ratifié le STE. Si, au sein de l'Union, la Convention d'entraide 2000 couvre certainement le besoin de ces pays, il n'en est pas de même pour les pays hors Union. La coopération entre ces Etats et la Suisse, respectivement les autres Etats hors Union, serait notablement renforcée par la ratification du STE.

## Turkey / Turquie

If your country is not a Party to this Protocol

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

2. Could you please share your experiences regarding the application of the issues covered by Articles 16 to 20 of ETS No. 182 on the basis of other bilateral or multilateral instruments or treaties?

If your country is a Party to this Protocol

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 3of ETS No.182?

   This protocol entered into force in November 2016. For this reason, there has not been any experience about this issue yet.

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

   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:

   The Republic of Turkey declares to reserve the following rights;

   - 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.

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.

   There is not any experience about this issue.

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

The video conference is a method applied within the framework of not only ETS No. 182 but also the Article9 of the Law on International Judicial Cooperation in Criminal Matters numbered 6706 in our national legislation. As the requested country, the requests are executed without any problem because our courts have sufficient technical capacity. As the requesting country, it has not been encountered any serious problem so far.

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

   There is not any experience on the basis of Article 11. Although it is not applied frequently, spontaneous information are shared via Interpol.

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

   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.

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.

   The procedural documents and judicial decisions are served with Turkish translations via the central authority.

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.

    The Republic of Turkey made reservation to this article and it 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.

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.

    The Republic of Turkey did not accept the Article 17 (cross-border observations) by making a reservation to this article. There is not any experience related with other articles.

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

    There is not any experience about this issue.

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

    Not yet.

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.

    The reservations were made to the Articles 16 and 17, and the withdrawal of these reservations is not being considered.

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

    There are not any other comments or proposals related to ETS No. 182.

## Ukraine

If your country is not a Party to this Protocol

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

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?

If your country is a Party to this Protocol

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?

   Ukraine has experience in providing assistance in proceedings conducted by the administrative authorities regarding the acts which are punishable in accordance with the legislation of the requesting or requested state as a violation of provisions of the legislation, in the event when such a decision may lead to proceedings in a court having jurisdiction, *inter alia,* in criminal matters.

   For instance, such assistance is provided by the GPO of Ukraine at requests of the Swiss Confederation, 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 the Portuguese Republic 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.

   However, pursuant to the Declaration made in accordance with Article 15 of the Convention Ukraine reserves the right to perform the request of administrative authorities of the Parties referred to in paragraph 3 of Article 1 and paragraph 3 of Article 15 of the Convention, as amended in the Protocol, where they are addressed to the General prosecutor's Office of Ukraine.

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.

   On average, the term of execution of requests was reduced due to the use of new channels and methods of communication.

   The Ukrainian party accepts requests that are received by electronic or facsimile communications. At the same time, the execution materials are sent upon receipt of the original of the request.

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.

   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 concrete, the said person has to acknowledge the service of the documents by signing the proof of service. Should the person refuse to receive the documents, the latter has to be noted on the proof of service together with the date and reason of the refusal. In such a case the proof of service has to be returned to the requesting authority. Other persons (e.g. family members) are under Czech legislation precluded to receive judicial documents for the said person.

   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.

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?

   According to the information of the GPO of Ukraine at the request of foreign 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).

   While conducting hearings by means of videoconference the test connection shall be carried out to ensure proper execution of the MLA request and to avoid some technical problems.

   Also it is required to state in the MLA requests the information on technical parameters of the equipment used by the requesting state to conduct videoconference (i.e. software, IP addresses, logins and passwords, where necessary etc.).

   Under Article 567 of the Ukrainian CPC a hearing upon a MLA request from a foreign competent authority shall be conducted in the presence of an investigating judge in the following cases:

   - impossibility for certain persons to appear before the foreign competent authority;
   - to ensure the for persons' safety;

- for other reasons specified by investigating judge (court).

Thus in the request shall be noted the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.

Interrogation by videoconference shall be conducted as prescribed by the procedural law of the requesting Party in so far as such procedure is not contrary to principles of the Ukrainian procedural law and generally recognized standards of human rights and fundamental freedoms.

The competent authority of the requesting Party shall be required to ensure participation of a translator in the videoconference.

If during interrogation an investigating judge notices that the interrogator violates the aforesaid procedure, he/she shall inform participants to the procedural action thereon and stop the interrogation in order to take measures to eliminate such violations.

Interrogation shall continue only after the required changes in the procedure have been agreed with the competent authority of the requesting Party.

Interrogation record and audio or video information mediums containing shall be forwarded to the competent authority of the requesting Party.

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

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.

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

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.

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.

Regarding the outgoing MLA requests it should be noted that according to Para 3 of Article 548 of the Ukrainian CPC a Ukrainian MLA 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.

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 according to Para 5 of Article 564 of the Ukrainian CPC 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.

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.

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.

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.

Pursuant to the Declaration made in accordance with Article 33, paragraph 2, of the Second Additional Protocol (ETS 182), Ukraine declares that it shall enjoy the right not to accept Article 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.

Pursuant to the provisions of the criminal procedural law of Ukraine, summons shall be served on a person living abroad in accordance with the Ukrainian CPC and international agreement on legal assistance, and in the absence of international agreement – in accordance with the Ukrainian CPC.

Also according to Article 547 of the Ukrainian CPC consulates or diplomatic missions of other states in Ukraine have the right to deliver documents to citizens of the state they represent.

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.

    Pursuant to paragraph 2 of Article 33 of the Second Additional Protocol, Ukraine stated that it invokes the right not to accept Articles 17 and 19.

    For the purposes of Article 18 of the Second Additional Protocol, 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.

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

    Ukraine has such experience in organising a JIT.

    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.

    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.

    Such practice is particularly important for rapid exchange of information and gathering evidence in high-profile criminal proceedings.

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

    There are certain obstacles to applying the provisions of Article 12 (Restitution) of the Second Additional Protocol, 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.

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.

    Pursuant to paragraph 2 of Article 33 of the Second Additional Protocol, Ukraine stated that it invokes the right not to accept Articles 16, 17 and 19. For the purposes of Article 18 of the Second Additional Protocol, 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.

    Withdrawal of these reservations is not currently considered.

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

We do not have any comments or proposals.

## Questionnaire

If your country is not a Party to this Protocol

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

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?

If your country is a Party to this Protocol

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?

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.

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.

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?

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

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

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.

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.

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.

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

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

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.

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

Si votre pays n'est pas Partie à ce Protocole

1. Si votre pays n'est pas Partie à la STE n° 182, la ratification de celle-ci est-elle envisagée ? Veuillez expliquer.

2. Pourriez-vous faire part de votre expérience concernant l'application des questions régies par les articles 16 à 20 de la STE n° 182 sur la base d'autres instruments ou traités bilatéraux ou multilatéraux ?

Si votre pays est Partie à ce Protocole

3. Quelle a été votre expérience, en tant qu'Etat requérant et en tant qu'Etat requis, en ce qui concerne l'entraide mutuelle relative à une procédure engagée par des autorités administratives dans le cadre défini par l'article 1 paragraphe 3 de la STE n° 182?

4. Votre pays a-t-il retiré des avantages des nouvelles voies et méthodes de communication mentionnées à l'article 4 de la STE n° 182? Veuillez expliquer l'ampleur et la nature des avantages.

5. Avez-vous eu affaire à des demandes d'entraide comprenant des formalités ou des procédures qui sont inhabituelles dans votre droit, ou dans celui de l'Etat requis (article 8 STE n° 182) ? Le cas échéant, veuillez expliquer si les demandes ont abouti ou pas.

6. Quelle a été votre expérience en ce qui concerne l'audition de suspects, d'accusés, de témoins et d'experts par vidéoconférence ou conférence téléphonique (articles 9 et 10 de la STE n° 182) en tant qu'Etat requérant ? Et pour les organiser en tant qu'Etat requis ?

7. Avez-vous souvent reçu ou envoyé des informations spontanées sur le fondement de l'article 11 de la STE n° 182? Veuillez expliquer votre expérience à cet égard.

8. Quelle est votre expérience en ce qui concerne l'application de l'article 12 de la STE n° 182 ?

9. Comment appliquez-vous les dispositions de l'Article 15 de la STE n° 182 concernant la langue des actes de procédure et des décisions judiciaires à remettre ? Faites-vous une distinction entre les cas de transmission directe et de transmission par les autorités centrales ? Merci d'expliquer votre expérience à cet égard.

10. L'envoi direct par voie postale d'actes de procédure et de décisions judiciaires à des personnes qui résident sur le territoire d'un autre Etat Partie (article 16 de la STE n° 182) est-il devenu une pratique courante ? Veuillez expliquer.

11. Quelle a été votre expérience dans l'application des techniques spéciales d'enquête mentionnées aux articles 17, 18 et 19 de la STE n° 182, en qualité tant de Partie requérante que de Partie requise ? Veuillez décrire votre expérience.

12. Vous est-il déjà arrivé d'organiser une ECE (équipe commune d'enquête) sur le fondement de l'article 20 de la STE n° 182? Le cas échéant, veuillez expliquer votre expérience.

13. Vous êtes-vous heurté à d'autres obstacles d'ordre juridique ou pratique dans l'application de la STE n° 182 ? Veuillez expliquer.

14. Si, en vertu de l'article 33 paragraphe 2, votre pays a formulé des réserves à l'égard des articles 16, 17, 18, 19 ou 20 de la STE n° 182, la levée (partielle ou totale) de ces réserves est-elle envisagée ? Veuillez expliquer.

15. Avez-vous d'autres observations ou propositions à formuler en ce qui concerne la STE n°182?