



*European Treaty Series - No. 182*

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

**Strasbourg, 8.XI.2001**

The member States of the Council of Europe, signatory to this Protocol,

Having regard to their undertakings under the Statute of the Council of Europe;

Desirous of further contributing to safeguard human rights, uphold the rule of law and support the democratic fabric of society;

Considering it desirable to that effect to strengthen their individual and collective ability to respond to crime;

Decided to improve on and supplement in certain aspects the European Convention on Mutual Assistance in Criminal Matters done at Strasbourg on 20 April 1959 (hereinafter referred to as "the Convention"), as well as the Additional Protocol thereto, done at Strasbourg on 17 March 1978;

Taking into consideration the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950, as well as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981,

Have agreed as follows:

## Chapter I

### Article 1 - Scope

Article 1 of the Convention shall be replaced by the following provisions:

- "1 The Parties undertake promptly to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.
- 2 This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.
- 3 Mutual assistance may also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Party by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.
- 4 Mutual assistance shall not be refused solely on the grounds that it relates to acts for which a legal person may be held liable in the requesting Party."

## **Article 2 - Presence of officials of the requesting Party**

Article 4 of the Convention shall be supplemented by the following text, the original Article 4 of the Convention becoming paragraph 1 and the provisions below becoming paragraph 2:

- “2 Requests for the presence of such officials or interested persons should not be refused where that presence is likely to render the execution of the request for assistance more responsive to the needs of the requesting Party and, therefore, likely to avoid the need for supplementary requests for assistance.”

## **Article 3 - Temporary transfer of detained persons to the territory of the requesting Party**

Article 11 of the Convention shall be replaced by the following provisions:

- “1 A person in custody whose personal appearance for evidentiary purposes other than for standing trial is applied for by the requesting Party shall be temporarily transferred to its territory, provided that he or she shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 of this Convention, in so far as these are applicable.

Transfer may be refused if:

- a the person in custody does not consent;
  - b his or her presence is necessary at criminal proceedings pending in the territory of the requested Party;
  - c transfer is liable to prolong his or her detention, or
  - d there are other overriding grounds for not transferring him or her to the territory of the requesting Party.
- 2 Subject to the provisions of Article 2 of this Convention, in a case coming within paragraph 1, transit of the person in custody through the territory of a third Party, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested. A Party may refuse to grant transit to its own nationals.
- 3 The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his or her release.”

## **Article 4 - Channels of communication**

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

- “1 Requests for mutual assistance, as well as spontaneous information, shall be addressed in writing by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels. However, they may be forwarded directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party and returned through the same channels.

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

- 9 Requests for mutual assistance and any other communications under this Convention or its Protocols may be forwarded through any electronic or other means of telecommunication provided that the requesting Party is prepared, upon request, to produce at any time a written record of it and the original. However, any Contracting State, may by a declaration addressed at any time to the Secretary General of the Council of Europe, establish the conditions under which it shall be willing to accept and execute requests received by electronic or other means of telecommunication.
- 10 The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Parties which provide for the direct transmission of requests for assistance between their respective authorities.”

#### **Article 5 – Costs**

Article 20 of the Convention shall be replaced by the following provisions:

- “1 Parties shall not claim from each other the refund of any costs resulting from the application of this Convention or its Protocols, except:
- a costs incurred by the attendance of experts in the territory of the requested Party;
  - b costs incurred by the transfer of a person in custody carried out under Articles 13 or 14 of the Second Additional Protocol to this Convention, or Article 11 of this Convention;
  - c costs of a substantial or extraordinary nature.
- 2 However, the cost of establishing a video or telephone link, costs related to the servicing of a video or telephone link in the requested Party, the remuneration of interpreters provided by it and allowances to witnesses and their travelling expenses in the requested Party shall be refunded by the requesting Party to the requested Party, unless the Parties agree otherwise.
- 3 Parties shall consult with each other with a view to making arrangements for the payment of costs claimable under paragraph 1.c above.
- 4 The provisions of this article shall apply without prejudice to the provisions of Article 10, paragraph 3, of this Convention.”

#### **Article 6 – Judicial authorities**

Article 24 of the Convention shall be replaced by the following provisions:

“Any State shall at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities. It subsequently may, at any time and in the same manner, change the terms of its declaration.”

## Chapter II

### **Article 7 – Postponed execution of requests**

- 1 The requested Party may postpone action on a request if such action would prejudice investigations, prosecutions or related proceedings by its authorities.
- 2 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.
- 3 If the request is postponed, reasons shall be given for the postponement. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

### **Article 8 – Procedure**

Notwithstanding the provisions of Article 3 of the Convention, where requests specify formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to fundamental principles of its law, unless otherwise provided for in this Protocol.

### **Article 9 – Hearing by video conference**

- 1 If a person is in one Party's territory and has to be heard as a witness or expert by the judicial authorities of another Party, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in paragraphs 2 to 7.
- 2 The requested Party shall agree to the hearing by video conference provided that the use of the video conference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested Party has no access to the technical means for video conferencing, such means may be made available to it by the requesting Party by mutual agreement.
- 3 Requests for a hearing by video conference shall contain, in addition to the information referred to in Article 14 of the Convention, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.
- 4 The judicial authority of the requested Party shall summon the person concerned to appear in accordance with the forms laid down by its law.

- 5 With reference to hearing by video conference, the following rules shall apply:
- a a judicial authority of the requested Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Party. If the judicial authority of the requested Party is of the view that during the hearing the fundamental principles of the law of the requested Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;
  - b measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Parties;
  - c the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Party in accordance with its own laws;
  - d at the request of the requesting Party or the person to be heard, the requested Party shall ensure that the person to be heard is assisted by an interpreter, if necessary;
  - e the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Party.
- 6 Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Party shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Party to the competent authority of the requesting Party.
- 7 Each Party shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory, in accordance with this article, and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.
- 8 Parties may at their discretion also apply the provisions of this article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving the accused person or the suspect. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Parties concerned, in accordance with their national law and relevant international instruments. Hearings involving the accused person or the suspect shall only be carried out with his or her consent.
- 9 Any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it will not avail itself of the possibility provided in paragraph 8 above of also applying the provisions of this article to hearings by video conference involving the accused person or the suspect.

## **Article 10 – Hearing by telephone conference**

- 1 If a person is in one Party's territory and has to be heard as a witness or expert by judicial authorities of another Party, the latter may, where its national law so provides, request the assistance of the former Party to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 6.
- 2 A hearing may be conducted by telephone conference only if the witness or expert agrees that the hearing take place by that method.
- 3 The requested Party shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law.
- 4 A request for a hearing by telephone conference shall contain, in addition to the information referred to in Article 14 of the Convention, the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.
- 5 The practical arrangements regarding the hearing shall be agreed between the Parties concerned. When agreeing such arrangements, the requested Party shall undertake to:
  - a notify the witness or expert concerned of the time and the venue of the hearing;
  - b ensure the identification of the witness or expert;
  - c verify that the witness or expert agrees to the hearing by telephone conference.
- 6 The requested Party may make its agreement subject, fully or in part, to the relevant provisions of Article 9, paragraphs 5 and 7.

## **Article 11 – Spontaneous information**

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



## **Article 12 – Restitution**

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

## **Article 13 – Temporary transfer of detained persons to the requested Party**

- 1 Where there is agreement between the competent authorities of the Parties concerned, a Party which has requested an investigation for which the presence of a person held in custody on its own territory is required may temporarily transfer that person to the territory of the Party in which the investigation is to take place.
- 2 The agreement shall cover the arrangements for the temporary transfer of the person and the date by which the person must be returned to the territory of the requesting Party.
- 3 Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Party.
- 4 The transferred person shall remain in custody in the territory of the requested Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from which the person was transferred applies for his or her release.
- 5 The period of custody in the territory of the requested Party shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Party.
- 6 The provisions of Article 11, paragraph 2, and Article 12 of the Convention shall apply *mutatis mutandis*.
- 7 Any Contracting State may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that before an agreement is reached under paragraph 1 of this article, the consent referred to in paragraph 3 of this article will be required, or will be required under certain conditions indicated in the declaration.

#### **Article 14 – Personal appearance of transferred sentenced persons**

The provisions of Articles 11 and 12 of the Convention shall apply *mutatis mutandis* also to persons who are in custody in the requested Party, pursuant to having been transferred in order to serve a sentence passed in the requesting Party, where their personal appearance for purposes of review of the judgement is applied for by the requesting Party.

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

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

#### **Article 16 – Service by post**

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

#### **Article 17 – Cross-border observations**

- 1 Police officers of one of the Parties who, within the framework of a criminal investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the above-mentioned person, shall be authorised to continue their observation in the territory of another Party where the latter has authorised cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorisation.

On request, the observation will be entrusted to officers of the Party in whose territory it is carried out.

The request for assistance referred to in the first sub-paragraph must be sent to an authority designated by each Party and having jurisdiction to grant or to forward the requested authorisation.

2 Where, for particularly urgent reasons, prior authorisation of the other Party cannot be requested, the officers conducting the observation within the framework of a criminal investigation shall be authorised to continue beyond the border the observation of a person presumed to have committed offences listed in paragraph 6, provided that the following conditions are met:

- a the authorities of the Party designated under paragraph 4, in whose territory the observation is to be continued, must be notified immediately, during the observation, that the border has been crossed;
- b a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted without delay.

Observation shall cease as soon as the Party in whose territory it is taking place so requests, following the notification referred to in a. or the request referred to in b. or where authorisation has not been obtained within five hours of the border being crossed.

3 The observation referred to in paragraphs 1 and 2 shall be carried out only under the following general conditions:

- a The officers conducting the observation must comply with the provisions of this article and with the law of the Party in whose territory they are operating; they must obey the instructions of the local responsible authorities.
- b Except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorisation has been granted.
- c The officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity.
- d The officers conducting the observation may carry their service weapons during the observation, save where specifically otherwise decided by the requested Party; their use shall be prohibited save in cases of legitimate self-defence.
- e Entry into private homes and places not accessible to the public shall be prohibited.
- f The officers conducting the observation may neither stop and question, nor arrest, the person under observation.
- g All operations shall be the subject of a report to the authorities of the Party in whose territory they took place; the officers conducting the observation may be required to appear in person.

- h The authorities of the Party from which the observing officers have come shall, when requested by the authorities of the Party in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.
- 4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate both the officers and authorities that they designate for the purposes of paragraphs 1 and 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.
- 5 The Parties may, at bilateral level, extend the scope of this article and adopt additional measures in implementation thereof.
- 6 The observation referred to in paragraph 2 may take place only for one of the following criminal offences:
- assassination;
  - murder;
  - rape;
  - arson;
  - counterfeiting;
  - armed robbery and receiving of stolen goods;
  - extortion;
  - kidnapping and hostage taking;
  - traffic in human beings;
  - illicit traffic in narcotic drugs and psychotropic substances;
  - breach of the laws on arms and explosives;
  - use of explosives;
  - illicit carriage of toxic and dangerous waste;
  - smuggling of aliens;
  - sexual abuse of children.

#### **Article 18 - Controlled delivery**

- 1 Each Party undertakes to ensure that, at the request of another Party, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.
- 2 The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Party, with due regard to the national law of that Party.
- 3 Controlled deliveries shall take place in accordance with the procedures of the requested Party. Competence to act, direct and control operations shall lie with the competent authorities of that Party.
- 4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

## **Article 19 – Covert investigations**

- 1 The requesting and the requested Parties may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).
- 2 The decision on the request is taken in each individual case by the competent authorities of the requested Party with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Parties with due regard to their national law and procedures.
- 3 Covert investigations shall take place in accordance with the national law and procedures of the Party on the territory of which the covert investigation takes place. The Parties involved shall co-operate to ensure that the covert investigation is prepared and supervised and to make arrangements for the security of the officers acting under covert or false identity.
- 4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of paragraph 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

## **Article 20 – Joint investigation teams**

- 1 By mutual agreement, the competent authorities of two or more Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Parties setting up the team. The composition of the team shall be set out in the agreement.

A joint investigation team may, in particular, be set up where:

- a a Party's investigations into criminal offences require difficult and demanding investigations having links with other Parties;
- b a number of Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Parties involved.

A request for the setting up of a joint investigation team may be made by any of the Parties concerned. The team shall be set up in one of the Parties in which the investigations are expected to be carried out.

- 2 In addition to the information referred to in the relevant provisions of Article 14 of the Convention, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.
- 3 A joint investigation team shall operate in the territory of the Parties setting up the team under the following general conditions:

- a the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Party in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;
  - b the team shall carry out its operations in accordance with the law of the Party in which it operates. The members and seconded members of the team shall carry out their tasks under the leadership of the person referred to in subparagraph a, taking into account the conditions set by their own authorities in the agreement on setting up the team;
  - c the Party in which the team operates shall make the necessary organisational arrangements for it to do so.
- 4 In this article, members of the joint investigation team from the Party in which the team operates are referred to as “members”, while members from Parties other than the Party in which the team operates are referred to as “seconded members”.
- 5 Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Party where the team operates, decide otherwise.
- 6 Seconded members of the joint investigation team may, in accordance with the law of the Party where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Party of operation and the seconding Party.
- 7 Where the joint investigation team needs investigative measures to be taken in one of the Parties setting up the team, members seconded to the team by that Party may request their own competent authorities to take those measures. Those measures shall be considered in that Party under the conditions which would apply if they were requested in a national investigation.
- 8 Where the joint investigation team needs assistance from a Party other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operation to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.
- 9 A seconded member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.
- 10 Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Parties concerned may be used for the following purposes:
- a for the purposes for which the team has been set up;

- b subject to the prior consent of the Party where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Party concerned or in respect of which that Party could refuse mutual assistance;
- c for preventing an immediate and serious threat to public security, and without prejudice to sub-paragraph b. if subsequently a criminal investigation is opened;
- d for other purposes to the extent that this is agreed between Parties setting up the team.

11 This article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

12 To the extent that the laws of the Parties concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Parties setting up the joint investigation team to take part in the activities of the team. The rights conferred upon the members or seconded members of the team by virtue of this article shall not apply to these persons unless the agreement expressly states otherwise.

#### **Article 21 – Criminal liability regarding officials**

During the operations referred to in Articles 17, 18, 19 or 20, unless otherwise agreed upon by the Parties concerned, officials from a Party other than the Party of operation shall be regarded as officials of the Party of operation with respect to offences committed against them or by them.

#### **Article 22 – Civil liability regarding officials**

1 Where, in accordance with Articles 17, 18, 19 or 20, officials of a Party are operating in another Party, the first Party shall be liable for any damage caused by them during their operations, in accordance with the law of the Party in whose territory they are operating.

2 The Party in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.

3 The Party whose officials have caused damage to any person in the territory of another Party shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.

4 Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Party shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Party.

5 The provisions of this article shall apply subject to the proviso that the Parties did not agree otherwise.

### **Article 23 – Protection of witnesses**

Where a Party requests assistance under the Convention or one of its Protocols in respect of a witness at risk of intimidation or in need of protection, the competent authorities of the requesting and requested Parties shall endeavour to agree on measures for the protection of the person concerned, in accordance with their national law.

### **Article 24 – Provisional measures**

- 1 At the request of the requesting Party, the requested Party, in accordance with its national law, may take provisional measures for the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests.
- 2 The requested Party may grant the request partially or subject to conditions, in particular time limitation.

### **Article 25 – Confidentiality**

The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

### **Article 26 – Data protection**

- 1 Personal data transferred from one Party to another as a result of the execution of a request made under the Convention or any of its Protocols, may be used by the Party to which such data have been transferred, only:
  - a for the purpose of proceedings to which the Convention or any of its Protocols apply;
  - b for other judicial and administrative proceedings directly related to the proceedings mentioned under (a);
  - c for preventing an immediate and serious threat to public security.
- 2 Such data may however be used for any other purpose if prior consent to that effect is given by either the Party from which the data had been transferred, or the data subject.
- 3 Any Party may refuse to transfer personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols where
  - such data is protected under its national legislation, and



- the Party to which the data should be transferred is not bound by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981, unless the latter Party undertakes to afford such protection to the data as is required by the former Party.
- 4 Any Party that transfers personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols may require the Party to which the data have been transferred to give information on the use made with such data.
  - 5 Any Party may, by a declaration addressed to the Secretary General of the Council of Europe, require that, within the framework of procedures for which it could have refused or limited the transmission or the use of personal data in accordance with the provisions of the Convention or one of its Protocols, personal data transmitted to another Party not be used by the latter for the purposes of paragraph 1 unless with its previous consent.

#### **Article 27 – Administrative authorities**

Parties may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities they will deem administrative authorities for the purposes of Article 1, paragraph 3, of the Convention.

#### **Article 28 – Relations with other treaties**

The provisions of this Protocol are without prejudice to more extensive regulations in bilateral or multilateral agreements concluded between Parties in application of Article 26, paragraph 3, of the Convention.

#### **Article 29 – Friendly settlement**

The European Committee on Crime Problems shall be kept informed regarding the interpretation and application of the Convention and its Protocols, and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of their application.

### **Chapter III**

#### **Article 30 – Signature and entry into force**

- 1 This Protocol shall be open for signature by the member States of the Council of Europe which are a Party to or have signed the Convention. It shall be subject to ratification, acceptance or approval. A signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously ratified, accepted or approved the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 2 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance or approval.
- 3 In respect of any signatory State which subsequently deposits its instrument of ratification, acceptance or approval, the Protocol shall enter into force on the first day

of the month following the expiration of a period of three months after the date of deposit.

#### **Article 31 - Accession**

- 1 Any non-member State, which has acceded to the Convention, may accede to this Protocol after it has entered into force.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession.
- 3 In respect of any acceding State, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession.

#### **Article 32 - Territorial application**

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

#### **Article 33 - Reservations**

- 1 Reservations made by a Party to any provision of the Convention or its Protocol shall be applicable also to this Protocol, unless that Party otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. The same shall apply to any declaration made in respect or by virtue of any provision of the Convention or its Protocol.
- 2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the right not to accept wholly or in part any one or more of Articles 16, 17, 18, 19 and 20. No other reservation may be made.
- 3 Any State may wholly or partially withdraw a reservation it has made in accordance with the foregoing paragraphs, by means of a declaration addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.
- 4 Any Party which has made a reservation in respect of any of the articles of this Protocol mentioned in paragraph 2 above, may not claim the application of that article by another Party. It may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

#### **Article 34 - Denunciation**

- 1 Any Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.
- 3 Denunciation of the Convention entails automatically denunciation of this Protocol.

#### **Article 35 - Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Protocol of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles 30 and 31;
- d any other act, declaration, notification or communication relating to this Protocol.

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

Done at Strasbourg, this 8<sup>th</sup> day of November 2001, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the non-member States which have acceded to the Convention.