

## **1530<sup>th</sup> meeting, 4 June 2025**

10 Legal questions

### **10.3 European Committee on Crime Problems (CDPC)**

Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

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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 safeguarding human rights, upholding the rule of law and supporting 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 (ETS No. 30, hereinafter referred to as "the Convention"), done at Strasbourg on 20 April 1959, as well as the Additional Protocols thereto of 17 March 1978 (ETS No. 99) and 8 November 2001 (ETS No. 182);

Taking into consideration the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), 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 (ETS No. 108), done at Strasbourg on 28 January 1981,

Have agreed as follows:

### **Article 1 – Channels of communication**

1. 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. For Parties to the Second Additional Protocol, requests for mutual assistance concerning proceedings as mentioned in paragraph 3 of Article 1 of this Convention, as amended by Article 1 of the Second Additional Protocol, 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 Organization (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, including those signed electronically, shall be forwarded by using secure electronic means of communication. The requested Party may require appropriate levels of security and authentication for the transmission of the request. Other means of communication which provide evidence in writing may be used.
  10. The Parties shall, upon request, submit the originals or certified copies of documents.
  11. 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 transmitted by electronic or other means of communication.
  12. The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Parties which provide for the direct transmission of requests for mutual assistance between their respective authorities."
2. Article 4 of the Second Additional Protocol to the Convention shall not apply as between Parties to this Protocol.
  3. Paragraph 1 of Article 21 of the Convention shall be replaced by the following provision:
    - "1. Information laid by one Party with a view to proceedings in the courts of another Party shall be transmitted in accordance with paragraphs 1 and 8 of Article 15."

## **Article 2 – Hearing by video conference**

1. The Convention shall be supplemented by the following provisions:
 

**"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 appropriate, 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, in addition to the information referred to in Article 14 of the Convention, specify the judicial authority which 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 a hearing by video conference, the following rules shall apply:
  - a. a judicial authority of the requested Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Party. If the judicial authority of the requested Party is of the view that during the hearing the fundamental principles of the law of the requested Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;
  - b. measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Parties;
  - c. the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Party in accordance with its own laws;
  - d. at the request of the requesting Party or the person to be heard, the requested Party shall ensure that the person to be heard is assisted by an interpreter, if necessary;
  - e. the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Party.
6. Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Party shall, on the conclusion of the hearing, draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Party to the competent authority of the requesting Party.
7. Each Party shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory, in accordance with this article, and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.
8. Parties may at their discretion also apply the provisions of this article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving the accused person or the suspect. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Parties concerned, in accordance with their national law and relevant international instruments. Hearings involving the accused person or the suspect shall only be carried out with his or her consent.
9. Any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it will not avail itself of the possibility provided in paragraph 8 above of also applying the provisions of this article to hearings by video conference involving the accused person or the suspect.
10. This article is without prejudice to any agreement or arrangement in force or that may be entered into between the competent authorities of the Contracting States allowing the hearing by video conference to be undertaken using different modalities than those foreseen in this article."

2. Article 9 of the Second Additional Protocol to the Convention shall not apply as between Parties to this Protocol.

### **Article 3 – Use of technical recording devices in the territory of another Party**

1. Where a Party uses technical devices intended to record positions, sound or images, in the framework of a criminal investigation and upon order or authorisation by a judicial authority of that Party regarding a person and/or an object, and where such recording devices enter the territory of another Party, such recording devices may continue to remain active subject to the provisions of this article. Whenever it is possible, the Party using the technical recording device shall send a mutual assistance request in advance, which contains the information enumerated in paragraph 3 of this article. In addition to the grounds enumerated under Articles 2 and 5 of the Convention, the execution of such a request may be refused on the ground that such recording would not have been authorised in a similar domestic case according to the law of the requested Party. The recording device may remain active until any indication to the contrary by the requested Party.

2. In urgent situations where it is not possible to send a mutual assistance request in advance, and in particular when the Party using the technical recording devices only becomes aware of the presence of the recording device on the territory of another Party after it has already crossed the border, the Party using the technical recording device shall immediately notify the other Party in accordance with the procedure set out in the following paragraphs. During this notification procedure, technical recording devices may remain active pending authorisation by the notified Party. When the delay between the reception of a mutual assistance request sent in accordance with paragraph 1 of this article and the entry of a technical recording device on its territory is too short for the requested Party to execute the request on time, the requested Party may treat this mutual assistance request as a notification in accordance with the following paragraphs.

3. Notifications in accordance with paragraph 2 shall contain:

- a. an indication of the authority ordering the use of the technical recording device;
- b. confirmation that a lawful order has been issued in connection with a criminal investigation;
- c. the reason why the purpose sought with the use of the technical recording device cannot be adequately achieved by other means of investigation;
- d. information about the subject of the technical recording device;
- e. a summary of the facts regarding the criminal conduct as well as the legal classification of the offence;
- f. a description of the measure carried out or functions of the recording device applied; and
- g. the expected duration of the use of the technical recording device.

4. The notified Party shall, as soon as possible and within ninety-six hours at the latest, indicate whether the technical recording devices may remain active or whether it validates their past activity. The notified Party may decide that the recording may not be carried out or shall be terminated, in a case where the recording would not be authorised in a similar domestic case according to the law of the notified Party. It may impose conditions, including that any material already recorded while the subject of the recording was on its territory may not be used, or may only be used under conditions which it shall specify, or making the continuation or the validation of the recording activity in its territory dependent on the submission of a formal request for mutual assistance. The notified Party may also order the partial or full destruction of the data collected within its territory. Pending an explicit authorisation by the notified Party, the notifying Party may not use the recordings as evidence in criminal proceedings.

5. 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 competent authorities that they designate for the purposes of the notification in accordance with paragraph 2 of this article, as well as the language(s) in which this notification shall be addressed to them. They subsequently may, at any time and in the same manner, change the terms of their declaration.

6. Any Contracting State may, by a declaration addressed to the Secretary General of the Council of Europe at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it will apply one or both of the following restrictions to the notification procedure envisaged in this article:

- a. that collection of data in private homes and places not accessible to the public shall be prohibited;
- b. that authorisation to use recording devices on its territory shall only be granted for the criminal offences enumerated in Article 17, paragraph 6, of the Second Additional Protocol to the Convention.

The Party subsequently may, at any time and in the same manner, withdraw any such declaration.

#### **Article 4 – Interception of telecommunications**

1. Requests for the interception of telecommunications shall, in addition to the indications mentioned in Article 14 of the Convention, contain the following information:

- a. a description, as precise as possible, of the telecommunication to be intercepted, including sufficient technical data, in particular the target identifier, to ensure that the request can be executed;
- b. the reason why the purpose of the request cannot be adequately achieved by other means of investigation;

- c. the confirmation that the interception has been authorised by the competent authority of the requesting Party;
- d. the period of time during which the interception is to be effected.

2. In addition to the grounds enumerated under Articles 2 and 5 of the Convention, the execution of requests referred to in the preceding paragraph may be refused on the ground that the interception of telecommunications would not have been authorised in a similar domestic case according to the law of the requested Party.

3. If the period for which interception is requested exceeds the period for which an order is, or may be, issued according to the law of the requested Party, that Party shall inform the requesting Party without delay and indicate possibilities, if any, of extending this period.

4. The requested Party may make the execution of requests referred to in paragraph 1 of this article dependent on one or more of the following conditions:

- a. that the judicial authorities of the requesting Party shall as soon as possible destroy those parts of the records which are of no relevance to the criminal proceedings in respect of which the request has been made and shall transmit a copy of the report on the destruction to the requested Party;
- b. that, after the requested interception has taken place, the authorities of the requested Party shall, in accordance with the law and practice of that Party, so inform the subscriber to the telecommunication service that has been intercepted or any other person concerned;
- c. that the evidence contained in the records resulting from the interception shall not be used by the authorities of the requesting Party for purposes other than those underlying the letters rogatory in respect of which assistance has been granted without the consent of the requested Party;
- d. any other condition which would be observed in a similar domestic case.

5. In the request for the interception of telecommunications or during the interception, the requesting Party may, where it has a particular reason to do so, also request a transcription, decoding or decrypting of the recording subject to the agreement of the requested Party.

6. The judicial authorities of the requested Party may, after consulting the requesting Party, destroy those parts of the records which, in view of the object and reason of the request, cannot be of any relevance to the criminal proceedings in respect of which the request has been made or would be covered by legal professional privilege, before transmitting the records to the requesting Party.

7. If it appears from the records resulting from the interception that an offence was committed wholly or mainly within the territory of the requested Party, the requesting Party should consider the possibility of laying information to the requested Party, in accordance with Article 21 of the Convention.

8. By mutual agreement, Parties may apply the notification procedure provided in Article 3 of this Protocol also to the interception of telecommunications in the territory of another Party without the technical assistance of that Party. In such cases, paragraphs 2 to 5 of Article 3 of this Protocol shall apply *mutatis mutandis*.

## Article 5 – Costs

1. 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, the costs which are incurred by telecommunications operators or service providers in executing requests for the interception of telecommunications, as well as the costs arising from the transcription, decoding and decrypting of the intercepted communications when applicable, 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.”

2. Article 5 of the Second Additional Protocol to the Convention shall not apply as between Parties to this Protocol.

#### **Article 6 – Time limit for the execution of requests for mutual assistance**

1. Requests for mutual assistance are to be executed with the same celerity and priority as for a comparable domestic case.
2. If the requesting Party has indicated that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a time limit is necessary to be set for the execution of a specific request, this shall be taken into account by the requested Party, which shall strive to comply with this time limit, to the extent possible.
3. If, in a specific case, the requested Party is unable to comply with the time limit set by the requesting Party, it shall inform the requesting Party without delay by any means. The Parties may then consult on the appropriate timing and conditions for the execution of the request for mutual assistance.

#### **Article 7 – Data protection**

1. The Convention shall be supplemented by the following provisions:

##### **“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 have 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 are protected under its national legislation; and/or
  - 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 (ETS No. 108), done at Strasbourg on 28 January 1981, as modernised by the Protocol amending this Convention (CETS No. 223), done at Strasbourg on 10 October 2018, 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 which it transmits to another Party not be used by the latter for the purposes of paragraph 1 unless with its previous consent.”

2. Article 26 of the Second Additional Protocol to the Convention shall not apply as between Parties to this Protocol.

### **Article 8 – 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.

### **Article 9 – Relations with the Convention and its Additional Protocols**

1. For Parties to this Protocol which are also Parties to the Second Additional Protocol to the Convention, Article 1 of this Protocol shall supersede Article 4 of the Second Additional Protocol; Article 2 of this Protocol shall supersede Article 9 of the Second Additional Protocol; Article 5 of this Protocol shall supersede Article 5 of the Second Additional Protocol; and Article 7 of this Protocol shall supersede Article 26 of the Second Additional Protocol.

2. The provisions of this Protocol are without prejudice to the provisions of Article 26 of the Convention.

### **Article 10 – Signature and entry into force**

1. This Protocol shall be open for signature by Signatories and Parties to 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 expressed its consent to be bound by the provisions of 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 date on which three Signatories have expressed their consent to be bound by the Protocol in accordance with the provisions of the preceding paragraph.

3. In respect of any Signatory which subsequently expresses its consent to be bound by it, 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 its instrument of ratification, acceptance or approval.

### **Article 11 – Accession**

1. After the entry into force of this Protocol, any State Party to the Convention may also accede to this Protocol. A State that has the right to become a Party to the Convention according to its provisions may accede to this Protocol while expressing its consent to be bound by the Convention.

2. In respect of any State acceding to this Protocol under paragraph 1 above, 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 with the Secretary General of the Council of Europe.

### **Article 12 – 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 time, by a 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 and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. 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 the 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 of the Council of Europe. The withdrawal 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 such notification by the Secretary General.

### **Article 13 – Reservations and declarations**

1. Reservations made by a Party to any provision of the Convention or its Protocols 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 Protocols, without prejudice to paragraphs 2 and 3 of this article.

2. Declarations made in accordance with the provisions of Article 15 of the Convention as amended by the Second Additional Protocol, shall be considered valid and applicable to Article 15 of the Convention as amended by this Protocol, with the exception of any declaration regarding the conditions to accept and execute requests transmitted by electronic or other means of communication (Article 15, paragraph 11, of the Convention as amended by this Protocol).

3. Any declaration made by a Party in accordance with Article 9, paragraph 9, of the Second Additional Protocol shall be considered valid and applicable to Article 2, paragraph 9, of this Protocol.

4. 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 both of Articles 3 and 4 of this Protocol. No other reservation may be made.

5. Each Party which has made a reservation may, at any time, withdraw it entirely or partially by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect from the date of the receipt of such notification by the Secretary General.

6. A Party which has made a reservation in respect of a provision of this Protocol may not claim the application of that provision by any other Party; it may, however, if the reservation is partial or conditional, claim the application of that provision insofar as it has itself accepted it.

### **Article 14 – Denunciation**

1. Any Party may, at any time, 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 automatically entails denunciation of this Protocol.

### **Article 15 – 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 its Articles 10 and 11;
- d. any reservation made in accordance with Article 13, paragraph 4, of this Protocol, and any withdrawal of such a reservation;
- e. any declaration made in accordance with Article 15, paragraphs 6, 8 and 11, of the Convention as amended by this Protocol; as well as Article 2, paragraph 9; Article 3, paragraphs 5 and 6; Article 7, paragraph 5; and Article 12 of this Protocol, and any withdrawal of such a declaration;
- f. any denunciation made in pursuance of Article 14 of this Protocol and the date on which denunciation takes effect;
- g. 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 xxx, this xxx day of 2025, 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.