



European Treaty Series - No. 98

**SECOND ADDITIONAL PROTOCOL
TO THE EUROPEAN CONVENTION
ON EXTRADITION**

Strasbourg, 17.III.1978

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

Desirous of facilitating the application of the European Convention on Extradition opened for signature in Paris on 13 December 1977 (hereinafter referred to as “the Convention”) in the field of fiscal offences;

Considering it also desirable to supplement the Convention in certain other respects,

Have agreed as follows:

Chapter I

Article 1

Paragraph 2 of Article 2 of the Convention shall be supplemented by the following provision:
“This right shall also apply to offences which are subject only to pecuniary sanctions.”

Chapter II

Article 2

Article 5 of the Convention shall be replaced by the following provisions:

“Fiscal offences

- 1 For offences in connection with taxes, duties, customs and exchange extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature.
- 2 Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, custom or exchange regulation of the same kind as the law of the requesting Party.”

Chapter III

Article 3

The Convention shall be supplemented by the following provisions:

“Judgments in absentia

- 1 When a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him *in absentia*, the requested Party may refuse to extradite for this purpose if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defence recognised as due to everyone charged with criminal offence. However, extradition shall be granted if the requesting Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence. This decision will authorise the requesting Party either to enforce the judgment in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited.

- 2 When the requested Party informs the person whose extradition has been requested of the judgment rendered against him *in absentia*, the requesting Party shall not regard this communication as a formal notification for the purposes of the criminal procedure in that State”.

Chapter IV

Article 4

The Convention shall be supplemented by the following provisions:

“Amnesty

Extradition shall not be granted for an offence in respect of which an amnesty has been declared in the requested State and which that State had competence to prosecute under its own criminal law.”

Chapter V

Article 5

Paragraph 1 of Article 12 of the Convention shall be replaced by the following provisions:

“The request shall be in writing and shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party; however, use of the diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more Parties.”

Chapter VI

Article 6

- 1 This Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 2 The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.
- 3 In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of the deposit of its instrument of ratification, acceptance or approval.
- 4 A member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.

Article 7

- 1 Any State which has acceded to the Convention may accede to this Protocol after the Protocol 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 which shall take effect 90 days after the date of its deposit.

Article 8

- 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, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect six months after the date of receipt by the Secretary General of the Council of Europe of the notification.

Article 9

- 1 Reservations made by a State to a provision of the Convention shall be applicable also to this Protocol, unless that State otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.
- 2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right:
 - a not to accept Chapter I;
 - b not to accept Chapter II, or to accept it only in respect of certain offences or certain categories of the offences referred to in Article 2;
 - c not to accept Chapter III, or to accept only paragraph 1 of Article 3;
 - d not to accept Chapter IV;
 - e not to accept Chapter V.
- 3 Any Contracting Party may withdraw a reservation it has made in accordance with the foregoing paragraph by means of declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
- 4 A Contracting Party which has applied to this Protocol a reservation made in respect of a provision of the Convention or which has made a reservation in respect of a provision of this Protocol may not claim the application of that provision by another Contracting 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.
- 5 No other reservation may be made to the provisions of this Protocol.

Article 10

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 11

- 1 Any Contracting 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 take effect six months after the date of receipt by the Secretary General of such notification.
- 3 Denunciation of the Convention entails automatically denunciation of this Protocol.

Article 12

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

- a any signature of this Protocol;
- b any deposit of an instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles 6 and 7;
- d any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 8;
- e any declaration received in pursuance of the provisions of paragraph 1 of Article 9;
- f any reservation made in pursuance of the provisions of paragraph 2 of Article 9;
- g the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 9;
- h any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol. Done at Strasbourg, this 17th day of March 1978, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.