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## GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

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### DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

No. 666

13 May 2003

#### EXTRADITION ACT, 1962 (ACT NO. 67 OF 1962)

#### **Entry into force of the European Convention on Extradition, the Additional Protocol to the European Convention on Extradition and the Second Additional Protocol to the European Convention on Extradition**

I, Penuell Mpapa Maduna, Minister for Justice and Constitutional Development, hereby give notice in terms of section 2(3)*ter* of the Extradition Act, 1962 (Act No. 67 of 1962), that Parliament has agreed to the accession to the European Convention on Extradition and its Additional Protocols. The accession is subject to the following declarations:

- (a) For the purposes of Article 2 of the Convention, the Republic of South Africa, shall not extradite any person unless the punishment imposed for a conviction in respect of which he or she is being sought is a sentence of imprisonment of at least six months.
- (b) For the purposes of Article 6 of the Convention, the expression "nationals" is defined, in terms of South African law, as persons who have acquired South African citizenship by means of birth, descent or naturalisation, and includes persons who hold citizenship of South Africa and of another country. These persons will all be liable to be extradited. South Africa's acceptance of dual citizenship will therefore not bar the extradition of a person where he or she is also in possession of a citizenship of a country which prohibits the extradition of its nationals.

2. (a) In terms article 29 of the European Convention on Extradition, the Convention shall come into force 90 days after the date of the deposit of the instrument of ratification.
  - (b) The instrument of ratification was deposited on 12 February 2003.
3. The European Convention on Extradition and the two Additional Protocols are contained in the Schedule hereto.

P M MADUNA  
MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT

#### **SCHEDULE**

## EUROPEAN CONVENTION ON EXTRADITION

The governments signatory hereto, being members of the Council of Europe, Considering that the aim of the Council of Europe is to achieve a greater unity between its members; Considering that this purpose can be attained by the conclusion of agreements and by common action in legal matters; Considering that the acceptance of uniform rules with regard to extradition is likely to assist this work of unification, Have agreed as follows:

### Article 1 – Obligation to extradite

The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.

### Article 2 – Extraditable offences

1. Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.
2. If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.
3. Any Contracting Party whose law does not allow extradition for certain of the offences referred to in paragraph 1 of this article may, in so far as it is concerned, exclude such offences from the application of this Convention.
4. Any Contracting Party which wishes to avail itself of the right provided for in paragraph 3 of this article shall, at the time of deposit of its instrument of

ratification or accession, transmit to the Secretary General of the Council of Europe either a list of the offences for which extradition is allowed or a list of those for which it is excluded and shall at the same time indicate the legal provisions which allow or exclude extradition. The Secretary General of the Council shall forward these lists to the other signatories.

5. If extradition is subsequently excluded in respect of other offences by the law of a Contracting Party, that Party shall notify the Secretary General. The Secretary General shall inform the other signatories. Such notification shall not take effect until three months from the date of its receipt by the Secretary General.
6. Any Party which avails itself of the right provided for in paragraphs 4 or 5 of this article may at any time apply this Convention to offences which have been excluded from it. It shall inform the Secretary General of the Council of such changes, and the Secretary General shall inform the other signatories.
7. Any Party may apply reciprocity in respect of any offences excluded from the application of the Convention under this article.

### **Article 3 – Political offences**

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.
2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.
3. The taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed to be a political offence for the purposes of this Convention.
4. This article shall not affect any obligations which the Contracting Parties may have undertaken or may undertake under any other international convention of a multilateral character.

### **Article 4 – Military offences**

Extradition for offences under military law which are not offences under ordinary criminal law is excluded from the application of this Convention.

**Article 5 – Fiscal offences**

Extradition shall be granted, in accordance with the provisions of this Convention, for offences in connection with taxes, duties, customs and exchange only if the Contracting Parties have so decided in respect of any such offence or category of offences.

**Article 6 – Extradition of nationals**

1.
  - a. A Contracting Party shall have the right to refuse extradition of its nationals.
  - b. Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term "nationals" within the meaning of this Convention.
  - c. Nationality shall be determined as at the time of the decision concerning extradition. If, however, the person claimed is first recognised as a national of the requested Party during the period between the time of the decision and the time contemplated for the surrender, the requested Party may avail itself of the provision contained in sub-paragraph a of this article.
2. If the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The requesting Party shall be informed of the result of its request.

**Article 7 – Place of commission**

1. The requested Party may refuse to extradite a person claimed for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory.
2. When the offence for which extradition is requested has been committed outside the territory of the requesting Party, extradition may only be refused if the law of the requested Party does not allow prosecution for the same category of offence when committed outside the latter Party's territory or does not allow extradition for the offence concerned.

**Article 8 – Pending proceedings for the same offences**

The requested Party may refuse to extradite the person claimed if the competent authorities of such Party are proceeding against him in respect of the offence or offences for which extradition is requested.

**Article 9 – *Non bis in idem***

Extradition shall not be granted if final judgment has been passed by the competent authorities of the requested Party upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested Party have decided either not to institute or to terminate proceedings in respect of the same offence or offences.

**Article 10 – Lapse of time**

Extradition shall not be granted when the person claimed has, according to the law of either the requesting or the requested Party, become immune by reason of lapse of time from prosecution or punishment.

**Article 11 – Capital punishment**

If the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death-penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death-penalty will not be carried out.

**Article 12 – The request and supporting documents**

1. The request shall be in writing and shall be communicated through the diplomatic channel. Other means of communication may be arranged by direct agreement between two or more Parties.
2. The request shall be supported by:
  - a. the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;

- b. a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and
- c. a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.

### **Article 13 – Supplementary information**

If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Convention, the latter Party shall request the necessary supplementary information and may fix a time-limit for the receipt thereof.

### **Article 14 – Rule of speciality**

1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases:
  - a. when the Party which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention;
  - b. when that person, having had an opportunity to leave the territory of the Party to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.
2. The requesting Party may, however, take any measures necessary to remove the person from its territory, or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time.
3. When the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.



**Article 15 – Re-extradition to a third state**

Except as provided for in Article 14, paragraph 1.b, the requesting Party shall not, without the consent of the requested Party, surrender to another Party or to a third State a person surrendered to the requesting Party and sought by the said other Party or third State in respect of offences committed before his surrender. The requested Party may request the production of the documents mentioned in Article 12, paragraph 2.

**Article 16 – Provisional arrest**

1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.
2. The request for provisional arrest shall state that one of the documents mentioned in Article 12, paragraph 2.a, exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought.
3. A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request.
4. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.
5. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.

**Article 17 – Conflicting requests**

If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the requested Party shall make its

decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.

#### **Article 18 – Surrender of the person to be extradited**

1. The requested Party shall inform the requesting Party by the means mentioned in Article 12, paragraph 1, of its decision with regard to the extradition.
2. Reasons shall be given for any complete or partial rejection.
3. If the request is agreed to, the requesting Party shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.
4. Subject to the provisions of paragraph 5 of this article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 15 days and shall in any case be released after the expiry of 30 days. The requested Party may refuse to extradite him for the same offence.
5. If circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited, it shall notify the other Party. The two Parties shall agree a new date for surrender and the provisions of paragraph 4 of this article shall apply.

#### **Article 19 – Postponed or conditional surrender**

1. The requested Party may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that Party or, if he has already been convicted, in order that he may serve his sentence in the territory of that Party for an offence other than that for which extradition is requested.
2. The requested Party may, instead of postponing surrender, temporarily surrender the person claimed to the requesting Party in accordance with conditions to be determined by mutual agreement between the Parties.

#### **Article 20 – Handing over of property**

1. The requested Party shall, in so far as its law permits and at the request of the requesting Party, seize and hand over property:
  - a. which may be required as evidence, or
  - b. which has been acquired as a result of the offence and which, at

the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.

2. The property mentioned in paragraph 1 of this article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.
3. When the said property is liable to seizure or confiscation in the territory of the requested Party, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.
4. Any rights which the requested Party or third parties may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the requested Party as soon as possible after the trial.

#### **Article 21 – Transit**

1. Transit through the territory of one of the Contracting Parties shall be granted on submission of a request by the means mentioned in Article 12, paragraph 1, provided that the offence concerned is not considered by the Party requested to grant transit as an offence of a political or purely military character having regard to Articles 3 and 4 of this Convention.
2. Transit of a national, within the meaning of Article 6, of a country requested to grant transit may be refused.
3. Subject to the provisions of paragraph 4 of this article, it shall be necessary to produce the documents mentioned in Article 12, paragraph 2.
4. If air transport is used, the following provisions shall apply:
  - a. when it is not intended to land, the requesting Party shall notify the Party over whose territory the flight is to be made and shall certify that one of the documents mentioned in Article 12, paragraph 2.a exists. In the case of an unscheduled landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 16, and the requesting Party shall submit a formal request for transit;
  - b. when it is intended to land, the requesting Party shall submit a formal request for transit.
5. A Party may, however, at the time of signature or of the deposit of its instrument of ratification of, or accession to, this Convention, declare that it will only grant transit of a person on some or all of the conditions on which it grants extradition. In that event, reciprocity may be applied.

6. The transit of the extradited person shall not be carried out through any territory where there is reason to believe that his life or his freedom may be threatened by reason of his race, religion, nationality or political opinion.

#### **Article 22 – Procedure**

Except where this Convention otherwise provides, the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the requested Party.

#### **Article 23 – Language to be used**

The documents to be produced shall be in the language of the requesting or requested Party. The requested Party may require a translation into one of the official languages of the Council of Europe to be chosen by it.

#### **Article 24 – Expenses**

1. Expenses incurred in the territory of the requested Party by reason of extradition shall be borne by that Party.
2. Expenses incurred by reason of transit through the territory of a Party requested to grant transit shall be borne by the requesting Party.
3. In the event of extradition from a non-metropolitan territory of the requested Party, the expenses occasioned by travel between that territory and the metropolitan territory of the requesting Party shall be borne by the latter. The same rule shall apply to expenses occasioned by travel between the non-metropolitan territory of the requested Party and its metropolitan territory.

#### **Article 25 – Definition of "detention order"**

For the purposes of this Convention, the expression "detention order" means any order involving deprivation of liberty which has been made by a criminal court in addition to or instead of a prison sentence.

#### **Article 26 – Reservations**

1. Any Contracting Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.

2. Any Contracting Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary General of the Council of Europe.
3. A Contracting Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save in so far as it has itself accepted the provision.

#### **Article 27 – Territorial application**

1. This Convention shall apply to the metropolitan territories of the Contracting Parties.
2. In respect of France, it shall also apply to Algeria and to the overseas Departments and, in respect of the United Kingdom of Great Britain and Northern Ireland, to the Channel Islands and to the Isle of Man.
3. The Federal Republic of Germany may extend the application of this Convention to the *Land* of Berlin by notice addressed to the Secretary General of the Council of Europe, who shall notify the other Parties of such declaration.
4. By direct arrangement between two or more Contracting Parties, the application of this Convention may be extended, subject to the conditions laid down in the arrangement, to any territory of such Parties, other than the territories mentioned in paragraphs 1, 2 and 3 of this article, for whose international relations any such Party is responsible.

#### **Article 28 – Relations between this Convention and bilateral Agreements**

1. This Convention shall, in respect of those countries to which it applies, supersede the provisions of any bilateral treaties, conventions or agreements governing extradition between any two Contracting Parties.
2. The Contracting Parties may conclude between themselves bilateral or multilateral agreements only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.
3. Where, as between two or more Contracting Parties, extradition takes place on the basis of a uniform law, the Parties shall be free to regulate their mutual relations in respect of extradition exclusively in accordance with such a system notwithstanding the provisions of this Convention. The same principle shall apply as between two or more Contracting Parties each of which has in force a law providing for the execution in its territory of warrants of arrest issued in the territory of the other Party or Parties. Contracting Parties which exclude or may in the future exclude the

application of this Convention as between themselves in accordance with this paragraph shall notify the Secretary General of the Council of Europe accordingly. The Secretary General shall inform the other Contracting Parties of any notification received in accordance with this paragraph.

#### **Article 29 – Signature, ratification and entry into force**

1. This Convention shall be open to signature by the members of the Council of Europe. It shall be ratified. The instruments of ratification shall be deposited with the Secretary General of the Council.
2. The Convention shall come into force 90 days after the date of deposit of the third instrument of ratification.
3. As regards any signatory ratifying subsequently the Convention shall come into force 90 days after the date of the deposit of its instrument of ratification.

#### **Article 30 – Accession**

1. The Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, provided that the resolution containing such invitation receives the unanimous agreement of the members of the Council who have ratified the Convention.
2. Accession shall be by deposit with the Secretary General of the Council of an instrument of accession, which shall take effect 90 days after the date of its deposit.

#### **Article 31 – Denunciation**

Any Contracting Party may denounce this Convention in so far as it is concerned by giving notice to the Secretary General of the Council of Europe. Denunciation shall take effect six months after the date when the Secretary General of the Council received such notification.

#### **Article 32 – Notifications**

The Secretary General of the Council of Europe shall notify the members of the Council and the government of any State which has acceded to this Convention of:

- a. the deposit of any instrument of ratification or accession;

- b. the date of entry into force of this Convention;
- c. any declaration made in accordance with the provisions of Article 6, paragraph 1, and of Article 21, paragraph 5;
- d. any reservation made in accordance with Article 26, paragraph 1;
- e. the withdrawal of any reservation in accordance with Article 26, paragraph 2;
- f. any notification of denunciation received in accordance with the provisions of Article 31 and by the date on which such denunciation will take effect.

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

Done at Paris, this 13th day of December 1957, in English and French, both texts being equally authentic, 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 the signatory governments.

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

The member States of the Council of Europe, signatory to this Protocol, Having regard to the provisions of the European Convention on Extradition opened for signature in Paris on 13 December 1957 (hereinafter referred to as "the Convention") and in particular Articles 3 and 9 thereof; Considering that it is desirable to supplement these Articles with a view to strengthening the protection of humanity and of individuals, Have agreed as follows:

### **Chapter I**

#### **Article 1**

For the application of Article 3 of the Convention, political offences shall not be considered to include the following:

- a. the crimes against humanity specified in the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 by the General Assembly of the United Nations;
- b. the violations specified in Article 50 of the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Article 51 of the 1949 Geneva Convention for the

Amelioration of the Condition of Wounded, Sick and Shipwrecked members of Armed Forces at Sea, Article 130 of the 1949 Geneva Convention relative to the Treatment of Prisoners of War and Article 147 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War;

- c. any comparable violations of the laws of war having effect at the time when this Protocol enters into force and of customs of war existing at that time, which are not already provided for in the above-mentioned provisions of the Geneva Conventions.

## Chapter II

### Article 2

Article 9 of the Convention shall be supplemented by the following text, the original Article 9 of the Convention becoming paragraph 1 and the under-mentioned provisions becoming paragraphs 2, 3 and 4:

2. "The extradition of a person against whom a final judgment has been rendered in a third State, Contracting Party to the Convention, for the offence or offences in respect of which the claim was made, shall not be granted:
  - a. if the afore-mentioned judgment resulted in his acquittal;
  - b. if the term of imprisonment or other measure to which he was sentenced:
    - i. has been completely enforced;
    - ii. has been wholly, or with respect to the part not enforced, the subject of a pardon or an amnesty;
  - c. if the court convicted the offender without imposing a sanction.
3. However, in the cases referred to in paragraph 2, extradition may be granted:
  - a. if the offence in respect of which judgment has been rendered was committed against a person, an institution or any thing having public status in the requesting State;
  - b. if the person on whom judgment was passed had himself a public status in the requesting State;
  - c. if the offence in respect of which judgment was passed was committed completely or partly in the territory of the requesting State or in a place treated as its territory.



4. The provisions of paragraphs 2 and 3 shall not prevent the application of wider domestic provisions relating to the effect of *ne bis in idem* attached to foreign criminal judgments."

### **Chapter III**

#### **Article 3**

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 4**

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 5**

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 preceeding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 8 of this Protocol.

#### **Article 6**

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it does not accept one or the other of Chapters I or II.
2. Any Contracting Party may withdraw a declaration it has made in accordance with the foregoing paragraph 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.
3. No reservation may be made to the provisions of this Protocol.

#### **Article 7**

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 8**

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 9**

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;
- 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 Article 3 thereof;
- d. any declaration received in pursuance of the provisions of Article 5 and any withdrawal of such a declaration;
- e. any declaration made in pursuance of the provisions of Article 6, paragraph 1;
- f. the withdrawal of any declaration carried out in pursuance of the provisions of Article 6, paragraph 2;
- g. any notification received in pursuance of the provisions of Article 8 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 15th day of October 1975, in English and 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.

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

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 1957 (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;

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- 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.

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