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Draft third additional protocol to the European Convention on Extradition (ETS No. 24)

Request for an opinion

Committee of Ministers



Letter from the Secretary to the Committee of Ministers to the Secretary General of the Parliamentary Assembly of 22 January 2010

Please find enclosed the draft Third Additional Protocol to the European Convention on Extradition (ETS No. 24) and its Explanatory Report (documents CM(2009)187, Appendix 2, and CM(2009)187 add1), as well as the draft Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health and its Explanatory Report (documents CM(2009)187, Appendix 3, and CM(2009)187 add2).

The Deputies agreed to transmit these texts to the Parliamentary Assembly at their 1075th meeting (20 January 2010) and invited the Assembly to give its opinion on the draft Additional Protocol and on the draft Convention.

[Signed]

Mireille Paulus, Secretary to the Committee of Ministers

Appendix

Draft third additional protocol to the European Convention on Extradition (ETS No. 24)

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

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Desirous of strengthening their individual and collective ability to respond to crime;

Having regard to the provisions of the European Convention on Extradition (CETS No. 24) opened for signature in Paris on 13 December 1957 (hereinafter referred to as "the Convention"), as well as the two Additional Protocols thereto (CETS Nos. 24 and 98), done at Strasbourg on 15 October 1975 and on 17 March 1978, respectively;

Considering it desirable to supplement the Convention in certain respects in order to simplify and accelerate the extradition procedure when the person sought consents to extradition,

Have agreed as follows:

Article 1 – Obligation to extradite under the simplified procedure

Contracting Parties undertake to extradite to each other under the simplified procedure as provided for by this Protocol persons sought in accordance with Article 1 of the Convention, subject to the consent of such persons and the agreement of the requested Party.

Article 2 – Initiation of the procedure

1. When the person sought is the subject of a request for provisional arrest in accordance with Article 16 of the Convention, the extradition referred to in Article 1 of this Protocol shall not be subject to the submission of a request for extradition and supporting documents in accordance with Article 12 of the Convention. The following information provided by the requesting Party shall be regarded as adequate by the requested Party for the purpose of applying Articles 3 to 5 of this Protocol and for taking its final decision on extradition under the simplified procedure:

- a. the identity of the person sought, including her/his nationality or nationalities when available;
- b. the authority requesting the arrest;
- c. the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment, as well as a confirmation that the person is sought in accordance with Article 1 of the Convention;
- d. the nature and legal description of the offence, including the maximum penalty or the penalty imposed in the final judgment, including whether any part of the judgment has already been enforced;
- e. information concerning lapse of time and its interruption;
- f. a description of the circumstances in which the offence was committed, including the time, place and degree of involvement of the person sought;
- g. in so far as possible, the consequences of the offence;
- h. in cases where extradition is requested for the enforcement of a final judgment, whether the judgment was rendered in absentia.

2. Notwithstanding paragraph 1, supplementary information may be requested if the information provided for in the said paragraph is insufficient to allow the requested Party to decide on extradition.

3. In cases where the requested Party has received a request for extradition in accordance with Article 12 of the Convention, this Protocol shall apply *mutatis mutandis*.

Article 3 – Obligation to inform the person

Where a person sought for the purpose of extradition is arrested in accordance with Article 16 of the Convention, the competent authority of the requested Party shall inform that person, in accordance with its law and without undue delay, of the request relating to her/him and of the possibility of applying the simplified extradition procedure in accordance with this Protocol.

Article 4 – Consent to extradition

1. The consent of the person sought and, if appropriate, her/his express renunciation of entitlement to the rule of speciality shall be given before the competent judicial authority of the requested Party in accordance with the law of that Party.
2. Each Party shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the legal consequences. To that end, the person sought shall have the right to legal counsel. If necessary, the requested Party shall ensure that the person sought has the assistance of an interpreter.
3. Consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be recorded in accordance with the law of the requested Party.
4. Subject to paragraph 5, consent and, where appropriate, renunciation, as referred to in paragraph 1, shall not be revoked.
5. Any state may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, declare that consent and, where appropriate, renunciation of entitlement to the rule of speciality, may be revoked. The consent may be revoked until the requested Party takes its final decision on extradition under the simplified procedure. In this case, the period between the notification of consent and that of its revocation shall not be taken into consideration in establishing the periods provided for in Article 16, paragraph 4, of the Convention. Renunciation of entitlement to the rule of speciality may be revoked until the surrender of the person concerned. Any revocation of the consent to extradition or the renunciation of entitlement to the rule of speciality shall be recorded in accordance with the law of the requested Party and notified to the requesting Party immediately.

Article 5 – Renunciation of entitlement to the rule of speciality

Each state may declare, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, that the rules laid down in Article 14 of the Convention do not apply where the person extradited by this State, in accordance with Article 4 of this Protocol:

- a. consents to extradition; or
- b. consents to extradition and expressly renounces her/his entitlement to the rule of speciality.

Article 6 – Notifications in case of provisional arrest

1. So that the requesting Party may submit, where applicable, a request for extradition in accordance with Article 12 of the Convention, the requested Party shall notify it, as soon as possible and no later than ten days after the date of provisional arrest, whether or not the person sought has given her/his consent to extradition.
2. In exceptional cases where the requested Party decides not to apply the simplified procedure in spite of the consent of the person sought, it shall notify this to the requesting Party sufficiently in advance so as to allow the latter to submit a request for extradition before the period of forty days established under Article 16 of the Convention expires.

Article 7 – Notification of the decision

Where the person sought has given her/his consent to extradition, the requested Party shall notify the requesting Party of its decision with regard to the extradition under the simplified procedure within twenty days of the date on which the person consented.

Article 8 – Means of communication

For the purpose of this Protocol, communications may be forwarded through electronic or any other means affording evidence in writing, under conditions which allow the Parties to ascertain their authenticity, as well as through the International Criminal Police Organisation (Interpol). In any case, the Party concerned shall, upon request and at any time, submit the originals or authenticated copies of documents.

Article 9 – Surrender of the person to be extradited

Surrender shall take place as soon as possible, and preferably within ten days from the date of notification of the extradition decision.

Article 10 – Consent given after expiry of the deadline laid down in Article 6

Where the person sought has given her/his consent after expiry of the deadline of ten days laid down in Article 6, paragraph 1, of this Protocol, the requested Party shall apply the simplified procedure as provided for in this Protocol if it has not yet received a request for extradition within the meaning of Article 12 of the Convention.

Article 11 – Transit

In the event of transit under the conditions laid down in Article 21 of the Convention, where a person is to be extradited under a simplified procedure to the requesting Party, the following provisions shall apply:

- a. the request for transit shall contain the information required in Article 2, paragraph 1, of this Protocol;
- b. the Party requested to grant transit may request supplementary information if the information provided for in sub-paragraph a is insufficient for the said Party to decide on transit.

Article 12 – Relationship with the Convention and other international instruments

1. The words and expressions used in this Protocol shall be interpreted within the meaning of the Convention. As regards the Parties to this Protocol, the provisions of the Convention shall apply, *mutatis mutandis*, to the extent that they are compatible with the provisions of this Protocol.

2. The provisions of this Protocol are without prejudice to the application of Article 28, paragraphs 2 and 3, of the Convention concerning the relations between the Convention and bilateral or multilateral agreements.

Article 13 – Friendly settlement

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 necessary to facilitate a friendly settlement of any difficulty which may arise out of its interpretation and application.

Article 14 – 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 ratified, accepted or approved the Convention, or does so simultaneously. 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, 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 of deposit.

Article 15 – 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 an instrument of accession with the Secretary General of the Council of Europe.

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 16 – 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 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 of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 17 – Declarations and reservations

1. Reservations made by a state to any provision of the Convention or the two Additional Protocols thereto shall also be applicable to this Protocol, unless that state 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 the two Additional Protocols thereto.
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 Article 2, paragraph 1, of this Protocol. No other reservation may be made.
3. Any state may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, make the declarations provided for in Article 4, paragraph 5, and in Article 5 of this Protocol.
4. Any state may wholly or partially withdraw a reservation or declaration it has made in accordance with this Protocol, 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.
5. Any Party which has made a reservation to Article 2, paragraph 1, of this Protocol, in accordance with paragraph 2 of this article may not claim the application of that paragraph by another Party. It may, however, if its reservation is partial or conditional, claim the application of that paragraph in so far as it has itself accepted it.

Article 18 – 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 six months after the date of receipt of the notification by the Secretary General of the Council of Europe.
3. Denunciation of the Convention automatically entails denunciation of this Protocol.

Article 19 – 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 14 and 15;
- d. any declaration made in accordance with Article 4, paragraph 5, Article 5, Article 16 and Article 17, paragraph 1, and any withdrawal of such a declaration;
- e. any reservation made in accordance with Article 17, paragraph 2, and any withdrawal of such a reservation;

- f. any notification received in pursuance of the provisions of Article 18 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 Strasbourg, this ... day of ..., 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.

Appendix - Explanatory report to the draft protocol

I. The Third Additional Protocol to the European Convention on Extradition, drawn up within the Council of Europe by the Committee of Experts on the Operation of European Conventions in the Penal Field (PC-OC), under the authority of the European Committee on Crime Problems (CDPC), has been opened for signature by the member states of the Council of Europe, in, on, on the occasion of the

II. The text of this Explanatory Report, prepared on the basis of that Committee's discussions does not constitute an instrument providing an authoritative interpretation of the text of the Protocol although it may facilitate the understanding of its provisions.

Introduction

Under the authority of the European Committee on Crime Problems (CDPC), the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC) is entrusted, in particular, with examining the functioning and implementation of Council of Europe conventions and agreements in the field of crime problems, with a view to adapting them and improving their practical application where necessary.

The need for the modernisation of the legal instruments of the Council of Europe in the criminal justice field, including the European Convention on Extradition (hereinafter referred to as "the Convention"), in order to enhance international co-operation, has been highlighted on several occasions. In particular, the "New Start" report (PC-S-NS (2002) 7, presented to the CDPC by the Reflection Group on developments in international co-operation in criminal matters) approved by the CDPC in June 2002 pointed to the necessity of realising a European area of shared justice. The Warsaw declaration and the Plan of Action adopted by the third Summit of Council of Europe Heads of State and Government of the member states of the Council of Europe (Warsaw, 16-17 May 2005) underlined the commitment, at the highest political level, to making full use of the Council of Europe's standard-setting potential and to promoting implementation and further development of the Organisation's legal instruments and mechanisms of legal cooperation.

At the High-Level Conference of the Ministries of Justice and of the Interior entitled "Improving European Cooperation in the Criminal Justice Field" held in Moscow (Russian Federation) on 9 and 10 November 2006, the Council of Europe was encouraged to continue its efforts to improve the operation of the main conventions regulating international co-operation in criminal matters, in particular those regarding extradition, in order to identify the difficulties encountered and to consider the need for any new instruments.

At its 52nd meeting (October 2006) the PC-OC put forward a number of proposals relating to the modernisation of the European Convention on Extradition, as amended by the two additional protocols thereto of 1975 and 1978. The Convention, which dates from 1957, is indeed one of the oldest European conventions in the criminal law field and has a direct impact on individuals' rights and freedoms, to which the CDPC asked the PC-OC to pay particular attention.

In this context, the PC-OC suggested, *inter alia*, that the Convention be revised first of all in order to include mechanisms of simplified extradition when the person sought consents to her/his extradition, the rationale being that if such consent is expressed, there is no need to go through all the formalities of extradition procedures. As a result, delays of surrender would in many cases be reduced substantially. This would contribute to achieve the important objective of increasing the efficiency and speed of extradition mechanisms, while respecting individuals' rights.

The PC-OC took account of the fact that extradition under simplified procedures already existed in practice and that it would be desirable to elaborate a treaty basis for such procedures, accessible to a large number of European States. It decided to draw inspiration from the simplified extradition mechanism provided for in the 1995 Convention on simplified extradition procedure between the Member States of the European Union.

The CDPC, at its 56th plenary session (June 2007), decided to mandate the PC OC, *inter alia*, to draft the necessary legal instruments to give a treaty basis to simplified forms of extradition when the person sought consents, along the lines proposed by the PC-OC. Having studied various options, the PC-OC agreed that an additional protocol to the Convention was the most appropriate solution in this respect. Consequently, it adopted a draft Third Additional Protocol to the Convention at its 56th meeting (May 2009) and submitted it to the CDPC for approval.

The drafts of the third Additional Protocol and the Explanatory report thereto were examined and approved by the CDPC at its 58th plenary session (12-16 October 2009) and submitted to the Committee of Ministers.

At the ... meeting of their Deputies on ..., the Committee of Ministers adopted the text of the Third Additional Protocol and decided to open it for signature, in

General considerations

The Protocol was drafted to address the concern that, while persons concerned consent to their surrender in view of their extradition in a large number of cases, the procedure under the Convention still remains long and can last up to several months.

One of the central issues for the Protocol was whether, in the event that a person is arrested on the basis of a request for provisional arrest, in application of Article 16, paragraph 2 of the Convention, and consents to her/his extradition, there was a need for a formal request of extradition and for all the supporting documents requested by Article 12 of the Convention.

The PC-OC observed that practice varied among States. In a majority of States where a simplified procedure of extradition is applied, it is considered that it is in the interest of the person sought to be quickly surrendered once her/his consent has been given. Some States concerned often find the information they need in the request for provisional arrest. In other States however, there is a need for the extradition request and for all or some of the documents provided for in Article 12 of the Convention. The consent of the person would, in this case, be taken into account in the extradition procedure in order to have a quicker final decision and a quicker surrender.

This is the reason for which the Protocol establishes as a principle extradition in accordance with the simplified procedure on the basis of the information included in a request for provisional arrest (complemented, if necessary by additional information). Nevertheless, the Protocol provides the possibility for the Parties to make a reservation specifying that they still require an extradition request, including all or some of the documents mentioned in Article 12 of the Convention.

The consent of the person sought can be significant for the conduct of the extradition procedure in the requested Party, even if such consent has been expressed after the reception of a request of extradition and the supporting documents under Article 12 of the Convention. The scope of the Protocol therefore extends also to these situations.

In both cases, the consent expressed by the person sought is central for the simplified procedure of extradition and shall be voluntary, conscious and in full awareness of the legal consequences of this consent. The person concerned shall not be deprived from the procedural guarantees defined by the laws of each Party, notably the access to a defence lawyer and to an interpreter.

The Protocol also establishes a series of time limits which enshrine the concern for efficiency and speed in the criminal justice field and which should reduce to a minimum the delays in the proceedings in the requesting Parties awaiting surrender, when the persons concerned do not intend to oppose their surrender.

It is nevertheless important to note that the consent does not deprive the requested Party of the possibility of invoking a ground for refusal set forth in the Convention. That State also has full discretion as to the application of the rule of speciality, as defined under Article 14 of the Convention, in simplified extradition cases and as to the relationship between the rule of speciality and the consent of the person.

The Protocol does not preclude its Parties from establishing in their national legislation and applying in practice even more simplified extradition procedures as long as such procedures are compatible with the purpose and the general principles of the Protocol.

Commentaries on the Articles of the Protocol

Article 1 - Obligation to extradite under the simplified procedure

This Article sets out the basic principle of the Convention, namely the obligation to extradite persons sought, subject to the consent of such persons to their extradition under the simplified procedure, given in accordance with Articles 3 to 5, and the agreement of the requested Party. In accordance with established practice under the Convention, simplified extradition procedures may concern persons against whom the competent authorities of the requested Party are proceeding for an offence (including prosecution and trial), or persons wanted for the carrying out of a sentence or detention order. It is clear from the wording chosen that the consent of the person to her/his extradition does not entail an obligation for the requested Parties to extradite the person in all cases.

The Article does not distinguish between the two types of situation for the use of the simplified procedure depending on the supporting documents, namely simplified extradition on the basis of a request for provisional arrest only or on the basis of a request for extradition.

Article 2 – Initiation of the procedure

This Article defines the two variants for the use of the simplified procedure of extradition:

- paragraphs 1 and 2 apply when the requested Party proceeds on the basis of a request for provisional arrest only, to be complemented, if necessary, with the information mentioned under these paragraphs;
- paragraph 3 extends the scope of the Protocol to cases where there is already an extradition request submitted in accordance with Article 12 of the Convention.

Paragraph 1

This paragraph concerns the main situation targeted by the Protocol, namely the simplified procedure following provisional arrest. It indicates that the starting-point for the simplified extradition procedure is the request for provisional arrest as provided for in Article 16 of the Convention. In accordance with Article 16, paragraph 3 of the Convention, a “red notice” or other message sent through Interpol may also be considered a request for provisional arrest for the purposes of this Protocol.

This paragraph also indicates the consequence of using the simplified procedure on the submission of documents, i.e. in such cases the submission of a request for extradition and the supporting documents required by Article 12 of the Convention are no longer necessary. The decision of extradition may be made on the basis of the information, specified under sub-paragraphs (a) to (h), including the confirmation that the person is sought in accordance with Article 1 of the Convention, which is either contained in the request for provisional arrest or complements it. This paragraph should not be understood as deterring the requesting Party from submitting any other information which it considers useful for allowing the requested Party to take a decision on extradition under the simplified procedure.

Information has to be communicated both to the arrested person, providing the basis on which consent to extradition may be given, and to the competent authority of the requested Party, providing the authority with the necessary information to enable it to take its decision on using the simplified procedure of extradition. As a rule, this information should be regarded by the competent authority of the requested Party as being sufficient for taking a decision on extraditing the person concerned. It comprises all the details needed for a proper examination of the question of the requested Party's agreement to the surrender as regards the person concerned, the summary of facts of the offence, the legal description of the offence and reference to the relevant provisions or information about the sentence which has already been delivered. As regards sub-paragraph (h), where the judgment was rendered in absentia, the drafters considered that it would be desirable for the requesting Party to send additional information on the possibility of a retrial or the relevant circumstances of the proceedings so as to allow the requested Party to ascertain, without asking for supplementary information, whether the safeguards of the European Convention on Human Rights (ECHR) have been observed.

The discussions concerning these provisions showed that the majority of drafters were in favour of following the simplified extradition procedure on the basis of the request for provisional arrest, abolishing the requirement for a formal extradition request and the documents specified under Article 12 of the Convention, and indeed considered this to be the principal added value of this Protocol. However, some States wish to

proceed with an extradition request in all cases. The majority of drafters agreed, therefore, that those States who cannot apply this paragraph should have the possibility of making a reservation to that effect (see Article 17, paragraph 2).

Thus, at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, States have the possibility of making a reservation to this paragraph, specifying that they require a request for extradition, and possibly some or all of the documents mentioned under Article 12 of the Convention, in cases of extradition under the simplified procedure.

Paragraph 2

This paragraph allows for the possibility of derogating from paragraph 1 and of requesting supplementary information if the information supplied is insufficient for the competent authority of the requested Party to give agreement to the extradition. However, this derogation concerns information as opposed to documents, and should not conflict with the abolition of the requirement to submit the documents specified by Article 12 of the Convention for the purposes of the simplified procedure of extradition.

Paragraph 3

This paragraph extends the scope of the Protocol to cases where the person sought consents after an extradition request has been submitted by the requesting Party, regardless of whether the request was or was not preceded by a request for provisional arrest. The Parties shall apply all the provisions of the Protocol in these cases, except for those which are only relevant to the simplified extradition procedure on the basis of a request for provisional arrest (such as Articles 6 and 10 of the Protocol).

Article 3 – Obligation to inform the person

The main purpose of this Article is to ensure that the person sought is informed of the reasons for her/his arrest and the possibility of consenting to her/his extradition. For the purposes of this Article, the drafters agreed that the term “arrested” refers to any action taken by the requested Party in accordance with Article 16 of the Convention. Depending on the national legislation, such action may include detention, as well as other measures restricting the individual freedom of the person, such as bail, house arrest or a ban to leave the country.

This Article requires the Parties to ensure that persons arrested for the purpose of extradition are informed of the request concerning them and of the possibility of their consenting to their extradition. The information is to be given by the “competent authority”, e.g. the authority empowered to take persons into custody. This does not necessarily imply the intervention of a judicial authority, and such information could for example be provided by the police at the moment of arrest. It should be given without undue delay after the person is taken into custody and in accordance with the law of the requested Party.

Article 4 – Consent to extradition

This Article deals with the way in which consent is given. It also applies to renunciation of entitlement to the rule of speciality where the law of the requested Party provides for such renunciation, as distinct from consent to extradition, in accordance with Article 5 of the Protocol.

The Protocol does not specify at which point the person's consent must be established. However, where the procedure is set in motion by the provisional arrest of the person sought in accordance with Article 2, paragraph 1, the requested Party should take into account Article 6, which provides for notification of consent within 10 days from the date of the provisional arrest. This time limit does not apply where the requested Party made a reservation to Article 2, paragraph 1.

Consent (and, where appropriate, renunciation of entitlement to the rule of speciality) is established before the competent judicial authority of the requested Party. The competent judicial authority may be, for example, a judge, a court, a magistrate or a prosecutor, depending on the law of the requested Party.

The forms in which consent (and, where appropriate, renunciation of entitlement to the rule of speciality) is established are determined by the legislation of each Party. Paragraph 2, however, requires Parties to adopt the measures necessary to ensure that consent (and, where appropriate, renunciation of entitlement to the speciality rule) is established in such a way as to show that the person concerned has expressed it voluntarily and in full awareness of the legal consequences (free and informed consent). It provides that, for this purpose,

the arrested person shall have the right to legal counsel, and where appropriate, to an interpreter. It is important for Parties to take all necessary measures in order to ensure that this right is efficiently implemented in practice, including through the provision of legal aid where necessary.

As to the legal consequences of consent, the information given to the person should include the implications of renunciation of the guarantees of the ordinary procedure, as well as the possible irrevocability of the consent given, in accordance with paragraph 4.

In view of the provisions of Article 5 of the Protocol, the person must also be aware of any effects of her/his consent to extradition on her/his entitlement to the rule of speciality, i.e. the possibility of being prosecuted on grounds other than those on which the simplified extradition procedure is based. As regards the effects of express renunciation of entitlement to the rule of speciality, the information given should concern the effects of such renunciation, the rule of speciality and the possible irrevocability of renunciation.

Paragraph 3 provides that consent to extradition (and, where appropriate, renunciation of entitlement to the rule of speciality) shall be recorded. This provision implies that the procedure for establishing consent (and, where appropriate, renunciation of entitlement to the speciality rule) must allow for subsequent verification of whether consent was given voluntarily and in full awareness of the legal consequences. However, the procedures and forms for such a record are left to the national law.

Paragraph 4 provides that consent to extradition (and, where appropriate, renunciation of entitlement to the rule of speciality) shall not be revoked. While the drafters chose to establish this as the rule, they were also aware that for some States the possibility of revoking either consent or renunciation to the entitlement to the rule of speciality is a very important principle. They decided therefore to include paragraph 5 of this Article, which provides the possibility for these States to allow for such revocation by way of a declaration made at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, or at any later time.

The drafters were also aware, however, that an untimely revocation may cause legal and practical difficulties, in particular with regard to the rule of speciality. An example for this would be the revocation of renunciation of entitlement to the rule of speciality after the first hearing in the requesting Party following surrender.

In order to strike a balance between the possibility of revocation foreseen in paragraph 5 and the concern for the efficiency of the simplified extradition procedure, and taking into account the fact that Article 4 provides the safeguards to ensure that consent is given in full awareness of legal consequences, the drafters decided that it would be appropriate to limit the possibility of revocation in time. In doing so, the Protocol distinguishes between the revocation of consent and of renunciation. Both of these time limits are to be seen as the maximum acceptable for the simplified extradition procedure, and shorter time limits for revocation defined in national legislation would be compatible with the Protocol.

As regards consent to extradition, the Parties can provide for the possibility of revocation until they take their final decision on simplified extradition which they notify to the requesting Party under Article 7 of the Protocol. In this case, in order to ensure that revocation of consent by the person concerned is not prejudicial to the smooth conduct of the extradition procedure, paragraph 5 provides that the period between the notification of consent and notification of its revocation shall not be taken into consideration in establishing the periods of provisional arrest of 18 and 40 days provided for in Article 16, paragraph 4 of the Convention. This means that where a person revokes her/his consent the requesting Party will have as many days for submitting its request for extradition as it had when it received notification of the person's consent to her/his extradition and it ceased preparing the documents required under Article 12 of the Convention.

As for revocation of renunciation of entitlement to the rule of speciality, the Protocol limits the possibility of such revocation until the actual surrender of the person to the requesting Party. The "surrender" should be understood as the moment at which the person is taken over by the authorities of the requesting Party.

While the Protocol requires revocation to be recorded and notified immediately to the requesting Party, it does not prescribe details of a procedure for revocation. Thus, the requested Party does not have the obligation to follow the same procedure for dealing with revocation as for establishing consent (see paragraphs 1 and 2).

Article 5 – Renunciation of entitlement to the rule of speciality

Article 5 deals with the question of the application of the rule of speciality, enshrined in Article 14 of the Convention, to the simplified extradition procedure. Article 14, paragraph 1 (a) of the Convention allows the requested Party to consent to the extension of extradition to offences other than those for which the person was extradited.

The member states of the Council of Europe have a wide range of different practices with regard to giving such consent in simplified extradition cases. This Article, while giving a legal basis for the non-application of Article 14 in the simplified extradition procedure, does not impose any obligations on the Parties in this respect. It provides that any Party may declare that the rule of speciality, as set out in Article 14 of the Convention, will not apply in the case of the simplified procedure. The main concern of the Protocol is thus one of ensuring that Parties are kept informed of this aspect of each other's national procedures.

To allow for the differences between legal systems, two declarations are possible: one to the effect that the rule of speciality will not apply when the person consents to her/his extradition, such consent automatically entailing renunciation of entitlement to the speciality rule; the other to the effect that the rule of speciality will not apply where the person who has consented to her/his extradition expressly and clearly renounces her/his entitlement to the rule of speciality.

Article 14 of the Convention continues to apply for those Parties, acting as requested States, who have not made a declaration under this Article.

Article 6 – Notifications in case of provisional arrest

This Article deals with situations where the simplified extradition procedure was initiated on the basis of a request for provisional arrest in accordance with Article 2, paragraph 1 of the Protocol. This implies naturally that its provisions do not apply when the requested Party has made a reservation to Article 2, paragraph 1 in accordance with Article 17 of the Protocol.

Paragraph 1

Immediate notification of consent is essential to ensure the smooth conduct of the simplified procedure where its starting-point is the provisional arrest of the person sought. The reason behind stricter time limits in these cases is the fact that Article 16, paragraph 4 of the Convention requires the requested Party to terminate provisional arrest if it does not receive the request for extradition and supporting documents within 40 days following the arrest.

The preparation of a request for extradition and other documents mentioned in Article 12 of the Convention, with the necessary translations, can be time-consuming and expensive. The drafters considered that early notification would enable the requesting Party to suspend preparation of the documents required and save these resources, thereby increasing the added value of the Convention.

Paragraph 2

In the case of refusal of extradition under the simplified procedure decided on by the competent authority of the requested Party in spite of the consent of the person sought, the requesting Party will have - through a combination of the two periods provided for in Articles 6, paragraph 1 and Article 7 of the Protocol - at least ten days before the expiry of the 40-day provisional arrest period laid down in Article 16 of the Convention in which to submit a request for extradition in accordance with Article 12 of the Convention.

Considering that this might not always be sufficient for the preparation of the request and the supporting documents, the drafters decided to emphasise that such a refusal, despite the consent of the person sought, should be exceptional and should always leave a reasonable time for the requesting Party to revert to the ordinary extradition procedure as provided for in the Convention.

Similarly, in exceptional cases, Parties that have made a reservation to Article 2, paragraph 1 may apply the ordinary extradition procedure despite the consent of the person concerned.

Article 7 – Notification of the decision

This Article seeks to speed up procedures by introducing a time limit for the requested Party to notify its decision with regard to the extradition under the simplified procedure. It provides that the extradition decision taken by the competent authority of the requested Party must be notified within twenty days from the day on which the person consented. This time limit applies regardless of whether the simplified extradition procedure was initiated on the basis of a request for provisional arrest or a request for extradition.

Of course, this is a maximum period and it is desirable that, where there appears to be no obstacle to extradition, just as in the case where there appears to be a major obstacle, any decision, positive or negative, should be notified as soon as possible after the person concerned has consented.

In some member states, a positive decision on extradition is not considered final until the time limit provided in domestic legislation for appealing against it has lapsed. As the simplified extradition procedure is based on the consent of the person concerned, any action by the person challenging a positive extradition decision, such as an appeal, is to be considered as a revocation of consent for the purposes of the Protocol and the provisions of Article 4, paragraph 5 of the Protocol apply, if the requested Party made a declaration under that paragraph. The drafters considered that, where these States are the requested Parties, it would be appropriate for them to notify the initial decision which is subject to appeal within the deadline of 20 days, in order to avoid legal uncertainty for the requesting Party, in particular where the 40-day limit of Article 16 of the Convention is applicable. Thus, even if the initial positive extradition decision is appealed against, due to the fact that the period between the date of consent and of its revocation is not taken into account for the purposes of Article 16, the requesting Party would have enough time to use the ordinary procedure by submitting a request for extradition and the supporting documents in accordance with Article 12 of the Convention.

Article 8 – Means of communication

Article 8 does not replace Article 12, paragraph 1 of the Convention (as modified by the Second Additional Protocol to the Convention). It completes Article 12 of the Convention in that it provides for the use of modern means of communication as well as communication through the Interpol, in order to ensure efficient communication in the context of the simplified extradition procedure.

This Article provides a legal basis for speedy communication while ensuring a written record and its authenticity. The Parties may also request to obtain the original document or an authenticated copy, in particular by mail.

Article 9 – Surrender of the person to be extradited

While the provisions of the Convention concerning surrender (Article 18) remain applicable in the simplified extradition procedure, this Article, in accordance with the spirit of the Protocol, highlights the importance of a speedy surrender when there is consent to extradition. The use of modern means of communication, in accordance with Article 8 of the Protocol, is an important element in the context of surrender.

While the drafters considered it unrealistic to set a mandatory deadline for surrender in simplified extradition cases, they nonetheless thought it necessary to send a strong signal to the Parties regarding the need to ensure surrender as quickly as possible. Accordingly, they agreed that surrender within ten days of the receipt of notification of the extradition decision by the requesting Party would be a reasonable and practicable goal in the great majority of cases.

As the Protocol does not regulate the issue of postponed or conditional surrender, and in accordance with its Article 12, paragraph 1, the possibility of postponed or conditional surrender remains open in accordance with Article 19 of the Convention in cases where extradition was granted following the simplified procedure.

Article 10 – Consent given after expiry of the deadline laid down in Article 6

This Article concerns the legal arrangements applicable where the person consents independently of the conditions laid down in Articles 2 to 9 of the Protocol and in particular after the ten-day period following provisional arrest specified in Article 6 has expired. It therefore does not concern the States which have made a reservation to Article 2, paragraph 1 of the Protocol.

This Article applies to cases where the person consents after the expiry of the initial ten-day period but before the expiry of the forty-day period stipulated in Article 16 of the Convention and before the requesting Party has submitted a formal request for extradition. It provides that the requested Party shall apply the simplified procedure provided for in the Protocol. If no consent has been given when the initial ten-day period expires, the requesting Party will of course have to prepare the request for extradition without waiting for the person to consent at a later stage in order to ensure that that request can be made within the maximum period of forty days.

Article 11 – Transit

This Article follows on from the simplification operated by Article 2 of the Protocol. It simplifies the conditions applicable to transit as laid down by Article 21 of the Convention. It is important to underline that the new means of communication pursuant to Article 8 of the Protocol also apply in the case of transit.

By way of derogation from Article 21, paragraph 3 of the Convention, a request for transit may be made through electronic or any other means affording evidence in writing (such as fax or electronic mail), and the decision of the Party requested to grant transit may be made known by the same method.

The request does not have to be accompanied by the documents referred to in Article 12, paragraph 2 of the Convention. It is important to note that the information contained under Article 2, paragraph 1 of the Protocol may be considered sufficient in general for the purposes of granting transit, regardless of whether the Parties in question made a reservation in accordance with Article 17, paragraph 2 of the Protocol. Nevertheless, in exceptional cases where this information is not sufficient for the State of transit to reach a decision on granting transit, paragraph 2 allows for the possibility of requesting supplementary information from the Party requesting transit.

The drafters considered that Article 11 of the Protocol could also cover cases where only the requesting Party and the Party requested to grant transit are Parties to the Protocol. In this case, the Party requested to grant transit can ask for additional information in accordance with Article 11(b), for example in relation to safeguards foreseen in Article 4, paragraphs 1 and 2 of the Protocol.

Article 12 – Relationship with the Convention and other international instruments

This Article clarifies the relationship between the Protocol on the one hand, and the Convention and other international agreements on the other hand.

Paragraph 1 ensures uniform interpretation of the Protocol and the Convention by providing that the words and expressions used in the Protocol shall be interpreted within the meaning of the Convention. The Convention should be understood as the European Convention on Extradition of 1957 (ETS No. 24), as amended between Parties concerned by the Additional Protocol (ETS No. 86) and/or the Second Additional Protocol (ETS No. 98) thereto.

Paragraph 1 further clarifies the relationship between the provisions of the Convention and those of the Protocol, i.e. as between the Parties to the Protocol, the provisions of the Convention shall apply to the extent that they are compatible with the provisions of the Protocol, in accordance with general principles and norms of international law.

Paragraph 2 clearly states that the Protocol does not alter the relation between the Convention and subsequent bilateral or multilateral agreements (Article 28, paragraph 2 of the Convention) or the possibility for Parties to regulate their mutual relations with regard to extradition exclusively in accordance with a system based on a uniform law (Article 28, paragraph 3 of the Convention).

This implies in particular that declarations made by EU member states in relation with the European Union Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between member states (2002/584/JHA) would automatically apply to the Protocol and would make it unnecessary for the states concerned to make new declarations to that effect.

Article 13 – Friendly settlement

This Article makes the European Committee on Crime Problems the guardian over the interpretation and application of the Protocol and follows the precedents established in other European conventions in the criminal justice field. It also follows Recommendation (99) 20 of the Committee of Ministers, concerning the friendly settlement of any difficulty that may arise out of the application of the Council of Europe conventions in the penal field. The reporting requirement which it lays down is intended to keep the European Committee on Crime Problems informed about possible difficulties in interpreting and applying the Protocol, so that it may contribute to facilitating friendly settlements and proposing amendments to the Convention and its Protocols which might prove necessary.

Articles 14 to 19 – Final clauses

Articles 14 to 19 are based both on the "Model final clauses for conventions and agreements concluded within the Council of Europe" which were approved by the Committee of Ministers at the 315th meeting of their Deputies in February 1980, and the final clauses of the Convention.

Since Article 16 concerning territorial application is mainly aimed at overseas territories, it was agreed that it would be clearly against the philosophy of the Protocol for any Party to exclude parts of its main territory from the application of this instrument, and that there would be no need to lay this down explicitly in the Protocol.

It is underlined that under the provisions of Article 17, paragraph 1, reservations and declarations made by a State with regard to any provision of the Convention or the two Additional Protocols thereto shall also be applicable to this Protocol, unless that State declares otherwise. In accordance with Article 17, paragraph 2, only reservations made to Article 2, paragraph 1 are admitted under the Protocol.