

Additional Protocol to the Criminal Law Convention on Corruption

Strasbourg, 15.V.2003

The member States of the Council of Europe and the other States signatory hereto,

Considering that it is desirable to supplement the Criminal Law Convention on Corruption (ETS No. 173, hereafter “the Convention”) in order to prevent and fight against corruption;

Considering also that the present Protocol will allow the broader implementation of the 1996 Programme of Action against Corruption,

Have agreed as follows:

Chapter I – Use of terms

Article 1 – Use of terms

For the purpose of this Protocol:

- 1 The term “*arbitrator*” shall be understood by reference to the national law of the States Parties to this Protocol, but shall in any case include a person who by virtue of an arbitration agreement is called upon to render a legally binding decision in a dispute submitted to him/her by the parties to the agreement.
- 2 The term “*arbitration agreement*” means an agreement recognised by the national law whereby the parties agree to submit a dispute for a decision by an arbitrator.
- 3 The term “*juror*” shall be understood by reference to the national law of the States Parties to this Protocol but shall in any case include a lay person acting as a member of a collegial body which has the responsibility of deciding on the guilt of an accused person in the framework of a trial.
- 4 In the case of proceedings involving a foreign arbitrator or juror, the prosecuting State may apply the definition of arbitrator or juror only in so far as that definition is compatible with its national law.

Chapter II – Measures to be taken at national level

Article 2 – Active bribery of domestic arbitrators

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to an arbitrator exercising his/her functions under the national law on arbitration of the Party, for himself or herself or for anyone else, for him or for her to act or refrain from acting in the exercise of his or her functions.

Article 3 – Passive bribery of domestic arbitrators

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by an arbitrator exercising his/her functions under the national law on arbitration of the Party, directly or indirectly, of any undue advantage for himself or herself or for anyone else, or the acceptance of an offer or promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

Article 4 – Bribery of foreign arbitrators

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving an arbitrator exercising his/her functions under the national law on arbitration of any other State.

Article 5 – Bribery of domestic jurors

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person acting as a juror within its judicial system.

Article 6 – Bribery of foreign jurors

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person acting as a juror within the judicial system of any other State.

Chapter III – Monitoring of implementation and final provisions

Article 7 – Monitoring of implementation

The Group of States against Corruption (GRECO) shall monitor the implementation of this Protocol by the Parties.

Article 8 – Relationship to the Convention

- 1 As between the States Parties the provisions of Articles 2 to 6 of this Protocol shall be regarded as additional articles to the Convention.
- 2 The provisions of the Convention shall apply to the extent that they are compatible with the provisions of this Protocol.

Article 9 – Declarations and reservations

- 1 If a Party has made a declaration in accordance with Article 36 of the Convention, it may make a similar declaration relating to Articles 4 and 6 of this Protocol at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.
- 2 If a Party has made a reservation in accordance with Article 37, paragraph 1, of the Convention restricting the application of the passive bribery offences defined in Article 5 of the Convention, it may make a similar reservation concerning Articles 4 and 6 of this Protocol at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. Any other reservation made by a Party, in accordance with Article 37 of the Convention shall be applicable also to this Protocol, unless that Party otherwise declares at the

time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

3 No other reservation may be made.

Article 10 – Signature and entry into force

1 This Protocol shall be open for signature by States which have signed the Convention. These States may express their consent to be bound by:

- a signature without reservation as to ratification, acceptance or approval; or
- b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Protocol shall enter into force on the first day of the month following the expiry of a period of three months after the date on which five States have expressed their consent to be bound by the Protocol in accordance with the provisions of paragraphs 1 and 2, and only after the Convention itself has entered into force.

4 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiry of a period of three months after the date of the expression of its consent to be bound by the Protocol in accordance with the provisions of paragraphs 1 and 2.

5 A signatory State may not ratify, accept or approve this Protocol without having, simultaneously or previously, expressed its consent to be bound by the Convention.

Article 11 – Accession to the Protocol

1 Any State or the European Community having acceded to the Convention may accede to this Protocol after it has entered into force.

2 In respect of any State or the European Community acceding to the Protocol, it shall enter into force on the first day of the month following the expiry of a period of three months after the date of the deposit of an instrument of accession with the Secretary General of the Council of Europe.

Article 12 – Territorial application

1 Any State or the European Community 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 Party may, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiry of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made in pursuance of the two preceding paragraphs 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 become effective on the first day of the month following the expiry of a period of three months after the date of receipt of the notification by the Secretary General.

Article 13 – Denunciation

1 Any Party may, at any time, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiry of a period of three months after the date of receipt of the notification by the Secretary General.

3 Denunciation of the Convention automatically entails denunciation of this Protocol.

Article 14 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State, or the European Community, having acceded to this Protocol of:

- a any signature of this Protocol;
- 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 10, 11 and 12;
- d any declaration or reservation made under Articles 9 and 12;
- e any other act, notification or communication relating to this Protocol.

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

Done at Strasbourg, this 15th day of May 2003, 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 of the signatory and acceding Parties.