

No. 19560

**FRANCE
and
FEDERAL REPUBLIC OF GERMANY**

**Additional Convention to the European Convention on
Mutual Assistance in Criminal Matters of 20 April
1959. Signed at Bonn on 24 October 1974**

Authentic texts: French and German.

Registered by France on 20 February 1981.

**FRANCE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Convention additionnelle à la Convention européenne d'en-
traide judiciaire en matière pénale du 20 avril 1959.
Signée à Bonn le 24 octobre 1974**

Textes authentiques : français et allemand.

Enregistrée par la France le 20 février 1981.

[TRANSLATION — TRADUCTION]

ADDITIONAL CONVENTION¹ BETWEEN THE FRENCH REPUBLIC AND THE FEDERAL REPUBLIC OF GERMANY TO THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS OF 20 APRIL 1959²

The President of the French Republic and the President of the Federal Republic of Germany,

Desiring to facilitate the implementation of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959,² hereinafter referred to as "the European Convention", in relations between the two States, and to supplement its provisions in accordance with article 26, paragraph 3, thereof,

Have agreed to conclude an additional Convention and have for that purpose appointed as their plenipotentiaries:

The President of the French Republic:

Mr. Olivier Wormser, Ambassador;

The President of the Federal Republic of Germany:

Mr. Hans-Georg Sachs, Secretary of State for Foreign Affairs,

Mr. Günther Erkel, Secretary of State to the Federal Ministry of Justice,

who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

Article I. The obligation to provide assistance envisaged in article 1 of the European Convention shall also apply:

- (a) To proceedings in respect of acts which are considered in one of the two States to be criminal in nature and in the other State constitute violations of public order (*Ordnungswidrigkeiten*) which are punishable by fines and in respect of which an appeal may be made to a court which is also competent in criminal matters;
- (b) To proceedings concerning compensation for unjustified detention or prosecution;
- (c) To civil suits combined with criminal suits when the prosecuting authority has not reached a final decision on the criminal suit.

Article II. If the request for assistance concerns an offence which the requested State considers to be a fiscal offence, that State shall not, for that reason alone, refuse assistance as envisaged in article 2 (a) of the European Convention.

Article III. 1. In the implementation of article 3, paragraph 1, of the European Convention, the request by a judge of the requesting State for the

¹ Came into force on 1 January 1981, i.e., the first day of the third month following the date of the exchange of instruments of ratification, which took place at Paris on 7 October 1980, in accordance with article XV (1) and (2).

² United Nations, *Treaty Series*, vol. 472, p. 185.

search, seizure or return of property shall have the same value, in the requested State, as a judicial verdict made for the same purposes in that State.

2. The transmittal to the requesting State of articles to be produced in evidence, records or documents as envisaged in article 3 of the European Convention shall be without prejudice either to the rights of the requested State, or to those of third parties.

3. In addition to the articles to be produced in evidence, records or documents referred to in article 3, paragraph 1, of the European Convention, property and valuables deriving from an offence found in possession of the perpetrator of the offence shall be returned to the Contracting State which so requests by the other State for the purposes of restitution to the victim unless a person or authority asserts a right on that property or those valuables.

4. Unless otherwise agreed in individual cases, articles to be produced in evidence, records, documents and other property or valuables whose transmittal to the requesting State has been authorized shall be sent by post or surrendered at the frontier to the authority empowered for those purposes by the said State.

Article IV. In the case envisaged in article 4 of the European Convention, the requested State, at the request of the requesting State, shall permit officials and interested persons to be present at the execution of measures of assistance in its territory, unless its legislation prohibits it.

Article V. 1. The judicial verdicts envisaged in article 7, paragraph 1, of the European Convention shall include, in particular, judgements, decisions taken in matters of violation of regulations for public order (*Ordnungswidrigkeiten*) and decisions relating to court costs.

2. In implementation of article 7, paragraph 3, of the European Convention, services of summons for persons accused in the requesting State which that State has requested to be transmitted in accordance with that article must, except in the cases of particular urgency, be received by the authorities of the requesting State at least 30 days before the date set for the appearance of the accused person.

Article VI. In the absence of the request envisaged in article 10, paragraph 3, of the European Convention, the requested State may still grant the advance provided for in that article to any person summoned to appear as a witness or an expert in the requesting State.

Article VII. The provisions of article 11 of the European Convention shall also apply, *mutatis mutandis*, in cases where the requested State, at the request of the requesting State, authorizes, with a view to the execution of a request for assistance, the transfer to its own territory of a person detained in the requesting State.

Article VIII. In addition to the information envisaged in article 14, paragraph 1, of the European Convention, requests for submission of records of proceedings and judicial verdicts shall specify the nature of the document to be served and the status of the recipient in the proceedings.

Article IX. 1. In implementation of article 15, paragraph 1, of the European Convention, letters rogatory and other applications for assistance referred to in paragraph 1 of that article shall be addressed, in France, either to the Ministry of Justice, or to the Prosecutor General of the Court of Appeal by which the request is to be executed and, in the Federal Republic of Germany, either to the Federal

Ministry of Justice, or to the Ministries of Justice of the *Länder* or the Prosecutor General (*Generalstaatsanwalt*) of the Court of Appeals (*Oberlandesgericht*) or to the Senior Prosecutor (*Oberstaatsanwalt*) of the Court of First Instance (*Landgericht*) by which the request is to be executed. The requests and documents relating to their execution shall be sent through the channel used to transmit the requests.

2. The above provisions shall also apply to the requests envisaged in article III, paragraph 3, of this Convention.

3. Letters rogatory addressed directly in application of article 15, paragraph 2, of the European Convention may be transmitted directly to the requesting authority, together with the relevant documents.

4. Requests for assistance, including those drawn up by the administrative authorities responsible for prosecuting violations of public order (*Ordnungswidrigkeiten*) shall be addressed by the competent judicial or administrative authorities in accordance with the modalities envisaged in paragraph 1 of this article.

5. In application of article 15, paragraph 3 (second sentence), of the European Convention, requests for extracts from judicial records referred to in article 13, paragraph 2, of the Convention shall be addressed, in France, to the Ministry of Justice, and in the Federal Republic of Germany, either to the Federal Ministry of Justice, or to the Ministries of Justice of the *Länder*. The requests envisaged in article IV of this Convention shall be addressed through the same channels.

6. In the case of direct transmission envisaged in article 15, paragraph 5, of the European Convention, the request for assistance shall mention the requesting judicial authority and the number allotted by that authority to the corresponding file.

Article X. In application of article 16, paragraph 1, of the European Convention, the requested State shall not require a translation when the requests for assistance and annexed documents addressed to it by the requesting State are drawn up in the language of that State.

Article XI. The provisions of article 21 of the European Convention shall be supplemented as follows:

1. The State which is requested to prosecute one of its nationals for a crime or an offence committed in the territory of the requesting State shall not refuse to prosecute on the ground that the actions were committed outside its own territory.

2. If an application for prosecution is required only under the law of the requested State, an application submitted within the legally prescribed period to the competent authority of the requesting State shall be valid in the requested State. The application may be submitted after the expiry of the period prescribed under the legislation of the requested State; in such cases, the period shall begin to run only after the day on which the authority responsible for criminal prosecution in the requested State receives the request.

3. The request shall be accompanied by:

(a) The original or a certified copy of the records of the case, a description of the facts and any evidentiary materials;

(b) A copy of the penal provisions applicable to the offence under the law in force in the State in which the offence was committed.

4. The requested State shall notify the requesting State as soon as possible of the decision taken on the prosecution and, where applicable, that taken after the proceedings. The copy of the latter decision must be certified. Articles and documents which have been transmitted to the requested State shall be returned by that State when they have ceased to be useful to it, unless the return thereof is waived by the requesting State. An exception may be made to this provision in respect of objects whose restitution to their legal owners has been ordered under the jurisdiction of the requested State concerned with the case.

5. Expenses incurred by the application of this article shall not be refunded.

Article XII. 1. The exchange of information on criminal convictions envisaged in article 22 of the European Convention shall take place at least once a quarter between the Ministry of Justice of the French Republic and the Ministry of Justice of the Federal Republic of Germany.

2. When one of the two States has knowledge of a verdict rendered in the other State against one of its nationals, it may request that State to transmit a certified copy of the decision. The request shall be met subject to the application of the provisions of article 2 of the European Convention. The copy shall be transmitted free of charge.

Article XIII. 1. Between the two Contracting States, the area of territorial application of this Convention shall be the same as that of the European Convention.

2. This Convention shall also apply to *Land Berlin*, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the French Republic within three months of the date of entry into force of this Convention.

Article XIV. In the event of denunciation of the European Convention by one of the two Contracting States in the manner prescribed in article 29 of that Convention, the denunciation shall take effect between the two States after the expiry of a period of one year from the date of receipt of notification thereof.

Article XV. 1. This Convention shall be ratified; the instruments of ratification shall be exchanged as soon as possible at Paris.

2. The Convention shall enter into force on the first day of the third month following the date of exchange of instruments of ratification if at that time both parties to the Convention are bound by the European Convention; otherwise, this Convention shall enter into force simultaneously with the European Convention.

3. This Convention may be denounced in writing; it shall cease to have effect six months after denunciation and in any event on the date on which the European Convention ceases to apply between the Parties to this Convention.

IN WITNESS WHEREOF, the plenipotentiaries have signed this Convention and affixed their seals.

DONE at Bonn, on 24 October 1974, in duplicate in the French and German languages, both texts being equally authentic.

For the French Republic:

[*Signed*]

OLIVIER WORMSER

For the Federal Republic of Germany:

[*Signed*]

HANS-GEORG SACHS

GÜNTHER ERKEL