

No. 25165

BELGIUM
and
GERMAN DEMOCRATIC REPUBLIC

Convention concerning judicial assistance in criminal matters (with additional protocol). Signed at Berlin on 12 December 1984

Authentic texts: French, Dutch and German.

Registered by Belgium on 29 July 1987.

BELGIQUE
et
RÉPUBLIQUE DÉMOCRATIQUE ALLEMANDE

Convention relative à l'entraide judiciaire en matière pénale (avec protocole additionnel). Signée à Berlin le 12 décembre 1984

Textes authentiques : français, néerlandais et allemand.

Enregistré par la Belgique le 29 juillet 1987.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE KINGDOM OF BELGIUM AND THE
GERMAN DEMOCRATIC REPUBLIC CONCERNING JUDICIAL
ASSISTANCE IN CRIMINAL MATTERS

The Kingdom of Belgium and
The German Democratic Republic,

Desiring to regulate their relations in the sphere of judicial assistance in criminal matters and to develop further the friendly relations between the two States in the spirit of the provisions of the Final Act of the Helsinki Conference on Security and Co-operation in Europe;²

Have decided to conclude this Convention and have for that purpose appointed as their plenipotentiaries:

His Majesty the King of the Belgians: Mr. Leo Tindemans, Minister for Foreign Affairs,
The State Council of the German Democratic Republic: Mr. Hans-Joachim Heusinger,
Vice-President of the Council of Ministers and Minister of Justice,
who have agreed as follows:

TITLE I. LEGAL PROTECTION

Article 1

1. The nationals of one Contracting State shall, in the territory of the other Contracting State, enjoy the same rights in criminal proceedings as the nationals of that State, especially as regards the appointment of defence counsel. If they do not understand the language of the criminal proceedings, they shall be assisted by an interpreter.

2. The use ascribed in this Convention to the term “national” is defined in an Additional Protocol.

TITLE II. JUDICIAL ASSISTANCE

Article 2. OBLIGATION OF JUDICIAL ASSISTANCE

1. The Contracting States undertake to grant each other judicial assistance in criminal matters at the request of their competent authorities and in accordance with the provisions of this Convention.

2. The following shall be considered to be competent authorities for the purposes of paragraph 1:

—In the Kingdom of Belgium: the judicial authorities and bailiffs;

—In the German Democratic Republic: the courts and the public Prosecutor’s office.

¹ Came into force on 26 December 1986, i.e., the thirtieth day following the exchange of the instruments of ratification, which took place at Brussels on 26 November 1986, in accordance with article 18 (1).

² *International Legal Materials*, vol. 14 (1975), p. 1292 (American Society of International Law).

Article 3. PURPOSE OF JUDICIAL ASSISTANCE

The purpose of Judicial Assistance is the conduct of preparatory inquiries and procedural action and the service of writs.

Article 4. TRANSMITTAL OF REQUESTS

Unless this Convention provides otherwise, requests for judicial assistance and documents shall be transmitted directly between the Ministry of Justice or the Public Prosecutor of the German Democratic Republic and the Ministry of Justice of the Kingdom of Belgium.

Article 5. LANGUAGES AND TRANSLATIONS

1. In relations between themselves, the authorities referred to in article 4 shall correspond each in the language(s) of its State.

2. Requests for judicial assistance shall be drawn up in the official language or one of the official languages of the requesting State.

3. The judicial documents to be served shall be accompanied by a translation in the official language or one of the official languages of the requested State.

Article 6. CONTENT AND FORM OF REQUESTS

1. Letters rogatory shall indicate the following:

- (1) The authority making the request;
- (2) The purpose of the request;
- (3) The names of the persons concerned, their nationality, profession, domicile or residence and their function in the case;
- (4) A brief statement of the facts, indicating the date and time of the offence;
- (5) The obligations to be enforced.

(2) Requests for the service of judicial documents shall indicate the following:

- (1) The authority making the request;
- (2) The purpose of the request and a brief statement of the facts;
- (3) The address and nationality of the person named in it.

EXECUTION OF REQUESTS

Article 7

1. The execution of requests for judicial assistance shall be effected in accordance with the legislation of the requested State.

2. On application, a procedure which does not comply with the legislation of the requested State may be used, provided that it is not incompatible with the principles of the public law of the requested State.

3. On application, the requesting State shall be informed of the date and place of execution of the letter rogatory. This information may be sent directly by mail or telex.

4. On application, the judicial authorities and the interested persons may be present at the execution of the letter rogatory, provided that the requested State consents.

Article 8

1. If the requested authority is not competent to execute the request for judicial assistance, it shall transmit the request to the competent authority.
2. If the person designated in the request cannot be found at the address given, the requested authority shall take the necessary measures to determine his residence.
3. If the requested authority is unable to execute the request, it shall so inform the requesting authority through the channels stipulated in article 4 and shall communicate the reasons why the request could not be enforced.

Article 9

1. If the document to be served is not drawn up in the language of the requested State or is not accompanied by a certified translation in that language, it can be served only if the person named in it is prepared to receive it voluntarily.

If, on this ground, he refuses to receive the document, service shall be considered void. In such case, the authorities referred to in article 4 shall agree on the arrangements for service.

2. Proof of service shall be either a dated receipt signed by the person named or an attestation by the requested authority indicating the manner, place and date of service.

Article 10. IMMUNITY OF WITNESSES AND EXPERTS; TRANSFER OF PERSONS IN CUSTODY

1. A witness or expert, whatever his nationality, who, being resident in the territory of a Contracting State, appears before the authorities of the other State in compliance with a summons addressed to him in the context of judicial assistance, shall not be subjected to criminal prosecution or deprived of his personal liberty in respect of acts or convictions anterior to his arrival, unless, although he has had the opportunity to do so, he fails to leave the territory of the requesting State within five days after ceasing to serve as a witness or expert.

2. Any person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting State shall be temporarily transferred to the territory of that State provided that he shall be returned within the time period set by the requested State. Transfer may be refused:

- (1) If the person in custody does not consent;
- (2) If his presence is necessary at criminal proceedings pending in the territory of the requested State;
- (3) If transfer is liable to prolong his detention or
- (4) If there are other overriding grounds for not transferring him.

3. The transferred person shall remain in custody in the territory of the requesting State unless the requested State applies for his release.

Article 11. COST OF JUDICIAL ASSISTANCE

Costs connected with the execution of requests for judicial assistance shall be defrayed by the requested State. The expenses of experts shall, however, be reimbursed by the requesting State.

Article 12. REFUSAL OF JUDICIAL ASSISTANCE

1. Judicial assistance may be refused:

- (1) If execution of the request is contrary to the law of the requested State;
- (2) If execution of the request might endanger the sovereignty, security or principles of public law of the requested State;
- (3) If the offence for which it is requested does not constitute an offence under the laws of the requested State.

2. If judicial assistance is refused, the requesting State shall be informed of the reasons for refusal.

Article 13. NOTIFICATION OF SENTENCING

Each Contracting State shall notify the other State at least once a year of decisions which have been rendered with respect to nationals of the last-mentioned State and have been entered in the judicial records.

Article 14. COMMUNICATION OF EXTRACTS FROM JUDICIAL RECORDS

If extracts from judicial records are requested in connection with criminal proceedings pending in the requesting State, the Contracting States shall transmit such extracts through the channel indicated in article 4.

TITLE III. LAYING OF INFORMATION CONCERNING OFFENCES

Article 15

1. Each Contracting State may notify the other State, with a view to proceedings, of crimes or offences committed in its territory by nationals of the other Contracting State.

2. The requested State shall determine whether, under its laws, there are sufficient grounds to institute proceedings. It shall inform the requesting State of the outcome of the criminal proceedings.

Article 16

1. The information laid shall include:

- (1) The person's full identity and his nationality;
- (2) A statement of the facts;
- (3) Any evidence connected with the offence;
- (4) A copy of the legal provisions applicable in the requesting State;
- (5) In the case of traffic offences, the regulations applicable in the specific instance.

2. Requests for notification shall be written in the official language or one of the official languages of the requesting State.

3. The request shall be transmitted in accordance with article 4.

TITLE IV. FINAL PROVISIONS

Article 17

Problems arising in connection with the implementation or interpretation of this Convention shall be settled through the diplomatic channel.

Article 18

1. This Convention shall be ratified.

It shall enter into force on the thirtieth day after the exchange of the instruments of ratification, which shall take place at Brussels.

2. This Convention shall be concluded for an unlimited period and shall remain valid for six months from the day on which one of the Contracting States informs the other Contracting State of its denunciation in writing through the diplomatic channel.

IN WITNESS WHEREOF the Plenipotentiaries have signed this Convention and have thereto affixed their seals.

DONE at Berlin, on 12 December 1984, in duplicate in the French, Dutch and German languages, the three texts being equally authentic.

For the Kingdom of Belgium:

L. TINDEMANS

For the German Democratic Republic:

H.-J. HEUSINGER

ADDITIONAL PROTOCOL TO THE CONVENTION BETWEEN THE KINGDOM OF BELGIUM AND THE GERMAN DEMOCRATIC REPUBLIC CONCERNING JUDICIAL ASSISTANCE IN CRIMINAL MATTERS

Referring to article 1, paragraph 2 of the Convention between the Kingdom of Belgium and the German Democratic Republic concerning Judicial Assistance in Criminal Matters, the undersigned Plenipotentiaries have agreed as follows:

“Persons who possess the nationality of a Contracting State under the laws of that State are considered to be nationals of that State.”

The Additional Protocol shall be an integral part of the aforesaid Convention.

DONE at Berlin, on 12 December 1984, in duplicate in the French, Dutch and German languages, the three texts being equally authentic.

For the Kingdom of Belgium:

L. TINDEMANS

For the German Democratic Republic:

H.-J. HEUSINGER
