

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1997 Nr. 280

A. TITEL

*Europees Verdrag aangaande de wederzijdse rechtshulp in strafzaken;
Straatsburg, 20 april 1959*

B. TEKST

De tekst van het Verdrag is geplaatst in *Trb.* 1965, 10. Zie ook *Trb.* 1969, 63.

Het Verdrag is aangevuld bij een Protocol van 17 maart 1978.

Zie voor ondertekeningen van het Verdrag ook *Trb.* 1969, 63, *Trb.* 1982, 7, *Trb.* 1990, 117, *Trb.* 1993, 131 en *Trb.* 1996, 63.

Het Verdrag is voorts nog in overeenstemming met artikel 27, eerste lid, ondertekend voor:

Cyprus	27 maart 1996
Moldavië	2 mei 1996
Ierland	15 oktober 1996
Letland	30 oktober 1996
Rusland ¹⁾	7 november 1996
Oekraïne	29 mei 1997

¹⁾ Onder de volgende voorbehouden en verklaringen:

Voorbehouden

1. The Russian Federation proceeds from the fact that the provisions of Article 2 of the Convention should be applied in such a manner as to ensure that the responsibility for committed crimes covered by the Convention is inevitable.

As regards "political offences" such an offence does not exist in the Russian legal system. In any cases the Russian Federation in taking decisions on assistance will not consider, in particular, as "political offence" or "offences connected with a political offence", the following acts or omissions:

1. crimes against humanity stipulated in Articles II and III of the Convention on the Prevention and Punishment of the Crime of Genocide (1948), in Articles II and III of the Convention on the Suppression and Punishment of the Crime of Apartheid (1973) and Articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);

2. offences stipulated in Article 50 of the Geneva Convention for the Amelio-

ration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949), Article 51 of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked members of Armed Forces at Sea (1949), Article 130 of the Geneva Convention relative to the Treatment of Prisoners of War (1949), Article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), Article 85 of the Additional Protocol I to the Geneva Conventions of August 12, 1949, relating to the Protection of Victims of International Armed Conflicts (1977) and in Articles 1 and 4 of the Additional Protocol II to the Geneva Conventions of August 12, 1949, relating to the Protection of Victims of Non-International Armed Conflicts (1977);

3. offences stipulated in the Convention for the Suppression of Unlawful Seizure of Aircraft (1970), the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988), supplementary to the above-mentioned 1971 Conventions;

4. serious offences stipulated in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents (1973);

5. offences stipulated in the International Convention against the Taking of Hostages (1979);

6. offences stipulated in the Convention on the Physical Protection of Nuclear Material (1980);

7. offences stipulated in the United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (1988);

as well as other offences stipulated in multilateral international treaties.

2. In addition to the grounds stipulated in Article 2, assistance may be refused in anyone of the following cases:

1. if the person suspected or accused in the requesting State of committing an offence is on trial or has been convicted or acquitted in respect of this offence in the Russian Federation or in a third State or if a decision not to initiate or to abandon investigation or proceedings for the case which is the subject of request for assistance has been taken in the Russian Federation or in a third State in relation to this person;

2. if the prosecution or enforcement of the sentence on the case is time-barred under the Russian law.

Article 3

The Russian Federation reserves the right to refuse the execution of letters rogatory for taking evidence of witnesses if the persons concerned have availed themselves of the right offered by the legislation of the Russian Federation to refuse testifying in general or on the said case.

Article 5

The Russian Federation reserves the right to execute letters rogatory for search or seizure of property only if the conditions of paragraph 1 a, b and c of this Article have been met.

Verklaringen

Article 7

The Russian Federation declares that a request for the service of the summons should be transmitted no less than 50 days before the date set for the appearance.

Article 11

The Russian Federation declares that the competent authorities of the requesting State should indicate the following data in the request for a temporary transfer of a person in custody for questioning as a witness or for confrontation:

1. the person's first and last names and, if possible, the place of his detention;
2. a summary of the offence and the time and place of its commitment;
3. indication of circumstances to be revealed at questioning or confrontation;
4. period of time during which the person's presence is necessary in the requesting State.

Permission for transportation of a person in custody under Article 11, paragraph 2, is to be requested from the Procurator-General's Office of the Russian Federation.

Article 15

Under Article 15, paragraph 6, the Russian Federation declares that in granting assistance in accordance with Articles 3, 4 and 5 of the Convention the designated authorities of the Contracting Parties shall be in contact with:

1. The Supreme Court of the Russian Federation - on issues of judicial activity of the Supreme Court of the Russian Federation, and the Ministry of Justice of the Russian Federation - on issues related to operation of other courts;

2. The Ministry of Internal Affairs - in regard to requests that do not need a judge's or prosecutor's sanction related to inquest or preliminary investigation on crime cases referred to the competence of the Internal Affairs bodies, and the Prosecutor-General's Office - in other cases of inquest and preliminary investigation.

In urgent cases inquiries may be addressed directly by judicial bodies of requesting Party to judicial bodies of the Russian Federation as they are determined in the declaration on Article 24. For all that a copy of the order shall be simultaneously sent to an appropriate central competent authority mentioned in the paragraph above.

Requests provided for in Article 13, paragraph 2, shall be addressed to the Ministry of Justice of the Russian Federation or the Prosecutor-General's Office of the Russian Federation.

The Supreme Court of the Russian Federation and the Prosecutor-General's Office shall decide, at the request of an authority which has made a request for assistance, whether the procedural legislation of the requesting foreign State shall be applied while such request is being executed, except in the case where the legislation of the requesting State contradicts that of the Russian Federation.

Article 16, paragraph 2

Requests for assistance addressed to the Russian Federation and attached materials should be provided with translation in Russian language or in English or French languages.

Article 22

The Russian Federation shall inform other Contracting Parties on measures, which followed the conviction of their citizens, on the basis of reciprocity and only in regard of data that are entered in official records maintained in the Russian Federation.

Article 24

For the purposes of the present Convention, "judicial authorities" in the Russian Federation are considered to be courts, public prosecutors, inquest and preliminary investigation bodies.

C. VERTALING

Zie *Trb.* 1965, 10, *Trb.* 1969, 63 en *Trb.* 1996, 63.

D. PARLEMENT

Zie *Trb.* 1969, 63, *Trb.* 1990, 117, *Trb.* 1991, 79 en *Trb.* 1993, 131.

E. BEKRACHTIGING

Zie *Trb.* 1965, 10, *Trb.* 1969, 63¹⁾, *Trb.* 1974, 163, *Trb.* 1977, 21, *Trb.* 1982, 7, *Trb.* 1990, 117, *Trb.* 1991, 79, *Trb.* 1993, 131 en *Trb.* 1996, 63²⁾.

Behalve de aldaar genoemde hebben nog de volgende Staten in overeenstemming met artikel 27, eerste lid, van het Verdrag een akte van bekrachtiging bij de Secretaris-Generaal van de Raad van Europa nedergelegd:

Polen ³⁾	19 maart 1996
Ierland ⁴⁾	28 november 1996
Litouwen ⁵⁾	17 april 1997
Estland ⁶⁾	28 april 1997
Letland ⁷⁾	2 juni 1997

¹⁾ De Regering van Zwitserland heeft op 13 december 1996 het bij de bekrachtiging gemaakte voorbehoud met betrekking tot artikel 2 vervangen door het volgende voorbehoud:

«article 2:

a. La Suisse se réserve le droit de refuser également l'entraide judiciaire lorsque l'acte motivant la demande est l'objet, en Suisse, d'une procédure pénale dirigée contre la même personne ou qu'une décision pénale y a été rendue, au fond, sur cet acte et sur la culpabilité de l'intéressé;

b. La Suisse se réserve en outre le droit de n'accorder l'entraide judiciaire en vertu de la Convention qu'à la condition expresse que les résultats des investigations faites en Suisse et les renseignements contenus dans les documents ou dossiers transmis soient utilisés exclusivement pour instruire et juger les infractions à raison desquelles l'entraide est fournie;

c. L'État requérant peut utiliser les résultats des investigations faites en Suisse et les renseignements contenus dans les documents ou dossiers transmis nonobstant la condition mentionnée sous lettre b., lorsque les faits à l'origine de la demande constituent une autre infraction pour laquelle l'entraide est susceptible d'être accordée par la Suisse ou que la procédure pénale dans l'État requérant est dirigée contre d'autres personnes ayant participé à la commission de l'infraction.»

Voorts heeft de Permanent Vertegenwoordiger van Zwitserland bij de Raad van Europa op 26 maart 1997 de volgende verklaring met betrekking tot bovenstaand gewijzigd voorbehoud afgelegd:

«La Représentation permanente de la Suisse, se référant à la réserve formulée par la Suisse à l'égard de l'article 2 de la Convention, dont la nouvelle teneur lui a été communiquée en date du 5 décembre 1996, a l'honneur de lui préciser ce qui suit:

La modification (suppression des termes «dans des cas spéciaux») apportée au paragraphe b de la réserve que la Suisse avait formulée en 1966 ne saurait être interprétée comme un élargissement de cette réserve, bien au contraire.

En effet, d'une part, depuis l'entrée en vigueur de la loi fédérale sur l'entraide internationale en matière pénale, du 20 mars 1981, les termes précités étaient

devenus superflus. D'autre part, le principe général de la spécialité, que le paragraphe b de la réserve ne fait que rappeler, sera dorénavant appliqué de façon plus restreinte par la Suisse, ainsi que cela ressort d'ailleurs du nouveau paragraphe c ajouté à la réserve suisse.»

2) De Regering van Portugal heeft de depositaris op 4 april 1997 medegedeeld dat in de akte van bekrachtiging de volgende voorbehouden en verklaringen hadden behoren te worden opgenomen:

«a) Le Portugal déclare n'exécuter les commissions rogatoires aux fins de perquisition et de saisie que si les conditions énoncées aux alinéas a) et c) de l'article 5 sont remplies.

b) Le Portugal déclare que les demandes et pièces annexes qui lui sont adressées doivent être accompagnées d'une traduction en langue portugaise ou française.

c) Conformément à l'article 7, paragraphe 3, le Portugal déclare que la citation à comparaître destinée à une personne poursuivie se trouvant sur son territoire doit être transmise à ses autorités dans un délai de 50 jours.

d) Aux termes de l'article 24, le Portugal déclare que, aux fins de la présente Convention, le Ministère Public doit être considéré comme autorité judiciaire».

3) Onder de volgende verklaringen:

“Article 5, paragraph 1

The Republic of Poland reserves the right to make the execution of letters rogatory for search or seizure of property dependent on the conditions mentioned in Article 5, paragraph 1 (a) (b) (c) of the Convention.

Article 7, paragraph 3

The transmission of the summons can be refused if less than 30 days remain before the date of appearance.

Article 13

Only information available in the Central Register of Convicted Persons shall be transmitted.

Article 15, paragraphs 2 and 6

When the letters rogatory are addressed directly to the judicial authorities, a copy of these letters rogatory shall be transmitted to the Ministry of Justice.

Article 16, paragraph 2

The requests and other documents being transmitted shall be accompanied by a translation into the Polish language or into an official language of the Council of Europe; the translation of the documents which are to be transmitted is not necessary if the transmission has the form of a simple service. In other cases they shall be translated into the Polish language if the receiver is a Polish national or if his permanent residence is in Poland.

Article 24

For the purposes of the Convention, the public prosecutor's offices shall be also deemed to be “judicial authorities”.

4) Onder de volgende voorbehouden en verklaringen:

Voorbehouden

“Article 2

The Government of Ireland reserves the right to refuse assistance if criminal proceedings have been instituted or concluded in Ireland or in a third State against a person who is the subject of the request for assistance in respect of the same conduct as that giving rise to proceedings in the requesting State in respect of that person.

The Government of Ireland reserves the right to make the supply of any mate-

rial or evidence, in response to a request for assistance, subject to the condition that such material or evidence shall not, without its consent, be used for a purpose that was not specified in the request.

Article 3

The Government of Ireland reserves the right not to take the evidence of witnesses or require the production of records or documents where its law recognises in relation thereto privilege, non-compellability or other exemption from giving evidence.

Article 11, paragraph 2

The Government of Ireland is unable to grant requests made under Article 11, paragraph 2, for a person in custody to transit through its territory.

Article 21

The Government of Ireland reserves the right not to apply Article 21.

Article 22

The Government of Ireland will not notify criminal convictions or subsequent measures under Article 22 except insofar as the organisation of its judicial records allows of so doing.”

Verklaringen

“Article 5, paragraph 1

The Government of Ireland reserves the right to make the execution of letters rogatory for search and seizure of property dependent on the following conditions:

- a. that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and Irish law, and
- b. that execution of the letters rogatory is consistent with Irish law.

Article 15, paragraph 1

In respect of the Government of Ireland, references to the “Ministry of Justice” for the purposes of Article 11, paragraph 2, Article 15, paragraphs 1, 3 and 6, Article 21, paragraph 1, and Article 22 are to the Department of Justice.

Article 15, paragraph 6

In accordance with Article 15, paragraph 6, the Government of Ireland gives notice that requests for assistance under the Convention should be sent to the Department of Justice.

Article 16, paragraph 2

In accordance with Article 16, paragraph 2, the Government of Ireland reserves the right to stipulate that requests and annexed documents shall be addressed to it accompanied by translations into either Irish or English.

Article 24

In accordance with Article 24, for the purposes of the Convention, the Government of Ireland deems the following to be judicial authorities:

- the District Court;
- the Circuit Court;
- the High Court;
- a Special Criminal Court;
- the Court of Criminal Appeal;
- the Supreme Court;
- the Attorney General of Ireland;
- the Director of Public Prosecutions;
- the Chief State Solicitor.”

⁵⁾ Onder de volgende voorbehouden en verklaringen:

“In respect of Article 2 of the Convention, the Republic of Lithuania reserves the right not to comply with a request insofar as it concerns:

- a. an offence which is not qualified as a “crime” and punishable as such under Lithuanian law;
- b. an offence in respect of which criminal proceedings have been instituted in the Republic of Lithuania or in a third State;
- c. an offence in respect of which the judicial authorities of the Republic of Lithuania either refused to institute, or discontinued criminal proceedings.

In respect of Article 13 of the Convention, the Republic of Lithuania declares that extracts from and information relating to judicial records shall be communicated only insofar as the records relate to a person against whom criminal proceedings have been instituted.

In relation to Article 5, paragraph 1, of the Convention, the Republic of Lithuania reserves the right to make the execution of letters rogatory for search or seizure of property dependent on the conditions mentioned in sub-paragraphs a), b) and c) of the said provision.

In relation to paragraph 6 of Article 15 of the Convention, the Republic of Lithuania shall provide assistance only in the event that the letters rogatory are sent directly to the Ministry of Justice of the Republic of Lithuania.

In relation to paragraph 2 of Article 16 of the Convention, the Republic of Lithuania reserves the right to stipulate that requests and annexed documents shall be addressed to it in Lithuanian or accompanied by a translation into one of the official languages of the Council of Europe, and that in default, the Republic of Lithuania will require compensation for all expenses incurred in translation.

In relation to Article 24 of the Convention, the Republic of Lithuania declares that for the purposes of the Convention the following authorities shall be considered as judicial authorities: the Ministry of Justice of the Republic of Lithuania, the Prosecutor General’s Office of the Republic of Lithuania, the Courts of Lithuania except the Constitutional Court.”

6) Onder de volgende voorbehouden en verklaringen:

“1) Pursuant to Article 23, paragraph 1 and Article 2 of the Convention, the Republic of Estonia reserves the right to refuse her assistance in case the request concerns an act which is not considered an offence under Estonian laws;

2) Pursuant to Article 5, paragraph 1, of the Convention, the Republic of Estonia declares that she will only execute letters rogatory for search or seizure of property under the conditions provided in Article 5, paragraph 1, sub-paragraphs (a) and (c);

3) Pursuant to Article 7, paragraph 3, of the Convention, the Republic of Estonia declares that the service of summons on an accused person who is in the Estonian territory shall be transmitted not later than 40 days before the date of trial;

4) Pursuant to Article 15, paragraph 6, of the Convention, the Republic of Estonia declares that a copy of the letters rogatory addressed directly to her judicial authorities shall be transmitted to the Ministry of Justice,

5) Pursuant to Article 16, paragraph 2, of the Convention, the Republic of Estonia declares that requests and annexed documents addressed to the Estonian authorities shall be accompanied by a translation into English;

6) Pursuant to Article 23, paragraph 1, of the Convention, the Republic of Estonia shall give information referred to in Article 22 only on concrete request;

7) Pursuant to Article 24 of the Convention, the Republic of Estonia declares that for the purposes of this Convention, the judicial authorities for Estonia shall be the courts, the State Prosecutor’s Office, the Ministry of Justice and the Ministry of Internal Affairs.”

7) Onder de volgende verklaringen:

“In pursuance of paragraph 6 of Article 15 of the Convention, the Republic of

Latvia declares that requests for assistance shall be sent through:

The Ministry of Interior - during pre-trial investigation until prosecution;
 Raina blvd 6,
 Riga, LV -1533, Latvia
 Fax: 371.2.223853
 Tel.: 371.2.219263

General Prosecutors office – during pre-trial investigation until submitting the case to the court:

O. Kalpaka blvd 6,
 Riga, LV – 1801, Latvia
 Fax: 371.7.212231
 Tel.: 371.7.320085

The Ministry of Justice - during the trial.

Brīvības blvd 36,
 Riga, LV - 1536, Latvia
 Fax: 371.7.285575
 Tel.: 371.7.280437
 371.7.282607

In pursuance of paragraph 2 of Article 16 of the Convention, the Republic of Latvia requires that requests and annexed documents shall be addressed accompanied by a translation into English language.

In pursuance of Article 24 of the Convention, the Republic of Latvia defines that, for the purposes of the Convention, the courts, the Public Prosecutor's Office and the police are deemed judicial authorities.”

F. TOETREDING

Zie *Trb.* 1969, 63, *Trb.* 1974, 163, *Trb.* 1977, 21, *Trb.* 1982, 7, *Trb.* 1990, 117, *Trb.* 1993, 131 en *Trb.* 1996, 63¹⁾

¹⁾ De Regering van Tsjechië heeft op 19 november 1996 de volgende verklaring afgelegd:

“In compliance with Article 24 of the European Convention on Mutual Assistance in Criminal Matters and Article 8 of its Additional Protocol, I declare that, for the purposes of the Convention and its Additional Protocol, the following authorities shall be considered as judicial authorities: the Office of the Supreme Prosecutor of the Czech Republic, the Regional and District Offices of the Prosecutors, the Town Prosecutor's Office in Prague, the Ministry of Justice of the Czech Republic, the Regional and District Courts and the Town Court in Prague.”

G. INWERKINGTREDING

Zie *Trb.* 1965, 10, *Trb.* 1969, 63, *Trb.* 1990, 117, *Trb.* 1991, 79 en *Trb.* 1993, 131.

H. TOEPASSELIJKVERKLARING

Zie *Trb.* 1990, 117, *Trb.* 1991, 79, *Trb.* 1993, 131 en *Trb.* 1996, 63.

J. GEGEVENS

Zie *Trb.* 1965, 10, *Trb.* 1969, 63, *Trb.* 1974, 163, *Trb.* 1977, 21, *Trb.* 1982, 7, *Trb.* 1990, 117, *Trb.* 1991, 79, *Trb.* 1993, 131 en *Trb.* 1996, 63.

Voor het op 5 mei 1949 te Londen tot stand gekomen Statuut van de Raad van Europa zie ook *Trb.* 1996, 355.

Voor het op 13 december 1957 te Parijs tot stand gekomen Europees Verdrag betreffende uitlevering zie ook, laatstelijk, *Trb.* 1997, 247.

Voor het op 17 maart 1978 te Straatsburg tot stand gekomen Protocol ter aanvulling van het onderhavige Verdrag zie ook *Trb.* 1997, 284.

Uitgegeven de *derde* november 1997.

De Minister van Buitenlandse Zaken,

H. A. F. M. O. VAN MIERLO