



STATUTORY INSTRUMENTS.

S.I. No. 339 of 2019



EXTRADITION (SECOND ADDITIONAL PROTOCOL TO THE EUROPEAN
CONVENTION ON EXTRADITION) ORDER 2019

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WHEREAS by the European Convention on Extradition done at Paris on 13 December 1957 (referred to subsequently in these recitals as “the 1957 Convention”), to which the State is a party, an arrangement was made with the other countries that are parties to that Convention for the surrender of persons wanted for prosecution or punishment for the offences specified therein;

AND WHEREAS the 1957 Convention was ratified on behalf of the State on 12 July 1988;

AND WHEREAS by the Second Additional Protocol to the European Convention on Extradition (the terms of which are set out in Part A of Schedule 1 to the following Order), done at Strasbourg on 17 March 1978 (referred to subsequently in these recitals as “the Second Additional Protocol”), to which the State is a party, an arrangement (within the meaning of section 8(2) of the Extradition Act 1965 (No. 17 of 1965)) was made with other parties to that Protocol amending the 1957 Convention;

AND WHEREAS the Second Additional Protocol was ratified on behalf of the State on 22 March 2019, subject to the declaration specified in Part B of Schedule 1 to the following Order;

AND WHEREAS the Second Additional Protocol has also been ratified or acceded to by the countries specified in Part A of Schedule 2 to the following Order, subject to the reservations and declarations specified in Part B of that Schedule;

AND WHEREAS it is intended accordingly to make a declaration pursuant to section 8(2) of the Extradition Act 1965 (No. 17 of 1965) in respect of the Second Additional Protocol;

NOW I, SIMON COVENEY, Minister for Foreign Affairs and Trade, in exercise of the powers conferred on me by section 8 (amended by section 57(3) of the Criminal Justice (Terrorist Offences) Act 2005 (No. 2 of 2005)) of the Extradition Act 1965 (No. 17 of 1965) (as adapted by the Foreign Affairs (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 246 of 2011)), and after consultation with the Minister for Justice and Equality, hereby order as follows:

1. (1) This Order may be cited as the Extradition (Second Additional Protocol to the European Convention on Extradition) Order 2019.

(2) This Order shall come into operation on 10 July 2019.
2. It is hereby declared that the Government have made an arrangement within the meaning of section 8(2) of the Extradition Act 1965 (No. 17 of 1965) (namely, the Second Additional Protocol to the European Convention on Extradition, done at Strasbourg on 17 March 1978) with the other countries that are parties to that Protocol, as specified in Part A of Schedule 2, and subject to the declaration specified in Part B of Schedule 1 and to the reservations and declarations specified

in Part B of Schedule 2, amending the European Convention on Extradition, done at Paris on 13 December 1957.

SCHEDULE 1

PART A

Second Additional Protocol to the European Convention on Extradition

done at Strasbourg on 17 March 1978

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

Desirous of facilitating the application of the European Convention on Extradition opened for signature in Paris on 13 December 1957 (hereinafter referred to as "the Convention") in the field of fiscal offences;

Considering it also desirable to supplement the Convention in certain other respects,

Have agreed as follows:

Chapter I

Article 1

Paragraph 2 of Article 2 of the Convention shall be supplemented by the following provision:

"This right shall also apply to offences which are subject only to pecuniary sanctions."

Chapter II

Article 2

Article 5 of the Convention shall be replaced by the following provisions:

"Fiscal offences

- 1 For offences in connection with taxes, duties, customs and exchange extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature.
- 2 Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, custom or exchange regulation of the same kind as the law of the requesting Party."

Chapter III

Article 3

The Convention shall be supplemented by the following provisions:

"Judgments in absentia

- 1 When a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him *in absentia*, the requested Party may refuse to extradite for this purpose if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defence recognised as due to everyone charged with criminal offence. However, extradition shall be granted if the requesting Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence. This decision will authorise the requesting Party either to enforce the judgment in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited.
- 2 When the requested Party informs the person whose extradition has been requested of the judgment rendered against him *in absentia*, the requesting Party shall not regard this communication as a formal notification for the purposes of the criminal procedure in that State".

Chapter IV

Article 4

The Convention shall be supplemented by the following provisions:

"Amnesty

Extradition shall not be granted for an offence in respect of which an amnesty has been declared in the requested State and which that State had competence to prosecute under its own criminal law."

Chapter V

Article 5

Paragraph 1 of Article 12 of the Convention shall be replaced by the following provisions:

"The request shall be in writing and shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party; however, use of the diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more Parties."

Chapter VI

Article 6

- 1 This Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 2 The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.
- 3 In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of the deposit of its instrument of ratification, acceptance or approval.
- 4 A member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.

Article 7

- 1 Any State which has acceded to the Convention may accede to this Protocol after the Protocol has entered into force.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect 90 days after the date of its deposit.

Article 8

- 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, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend 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.
- 3 Any declaration made in pursuance of the preceding paragraph 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 take effect six months after the date of receipt by the Secretary General of the Council of Europe of the notification.

Article 9

- 1 Reservations made by a State to a provision of the Convention shall be applicable also to this Protocol, unless that State otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.
- 2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right:
 - a not to accept Chapter I;
 - b not to accept Chapter II, or to accept it only in respect of certain offences or certain categories of the offences referred to in Article 2;
 - c not to accept Chapter III, or to accept only paragraph 1 of Article 3;
 - d not to accept Chapter IV;
 - e not to accept Chapter V.
- 3 Any Contracting Party may withdraw a reservation it has made in accordance with the foregoing paragraph by means of declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
- 4 A Contracting Party which has applied to this Protocol a reservation made in respect of a provision of the Convention or which has made a reservation in respect of a provision of this Protocol may not claim the application of that provision by another Contracting Party; it may, however, if its reservation is partial or conditional claim, the application of that provision in so far as it has itself accepted it.
- 5 No other reservation may be made to the provisions of this Protocol.

Article 10

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 needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 11

- 1 Any Contracting 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 take effect six months after the date of receipt by the Secretary General of such notification.
- 3 Denunciation of the Convention entails automatically denunciation of this Protocol.

Article 12

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

a any signature of this Protocol;

b any deposit of an instrument of ratification, acceptance, approval or accession;

c any date of entry into force of this Protocol in accordance with Articles 6 and 7;

d any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 8;

e any declaration received in pursuance of the provisions of paragraph 1 of Article 9;

f any reservation made in pursuance of the provisions of paragraph 2 of Article 9;

g the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 9;

h any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

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

Done at Strasbourg, this 17th day of March 1978, in English and in French, both texts being equally authoritative, in a single copy which shall remain 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 States.

SCHEDULE 1

PART B

**Declaration made on behalf of the State with respect to the Second Additional Protocol
to the European Convention on Extradition**

Declaration contained in the instrument of ratification, deposited on 22 March 2019:

In accordance with paragraph 2 of Article 9 of the Protocol, Ireland declares that it does not accept Chapter I, Chapter III, Chapter IV or Chapter V thereof.

SCHEDULE 2**PART A**

Albania	Iceland	Russian Federation
Armenia	Isle of Man	Saba
Aruba	Italy	Serbia
Austria	Monaco	Sint Eustatius
Azerbaijan	Montenegro	Sint Maarten
Bailiwick of Guernsey	Netherlands	South Africa
Bonaire	Norway	Switzerland
Bosnia and Herzegovina	Republic of Korea	Turkey
Curaçao	Republic of Moldova	Ukraine
Georgia	Republic of North Macedonia	

SCHEDULE 2**PART B****Reservations and declarations made by states parties to the Second Additional Protocol to the European Convention on Extradition**

(Unless otherwise indicated, declarations and reservations made upon signature, ratification, acceptance, approval, or accession).

Austria

Declaration contained in a letter from the Permanent Representative of Austria, dated 8 September 1994, registered at the Secretariat General of the Council of Europe on 9 September 1994:

With respect to the member States of this Additional Protocol, Austria declares that, under the conditions provided by Chapter II, it will grant extradition also for offences which are exclusively contraventions against regulations concerning monopolies on the export, import, transit and rationing of goods.

Georgia

In pursuance of Article 9, paragraph 2, Georgia declares that it does not accept Chapter V of this Protocol. According to the legislation of Georgia, the competent body to review extradition cases is the General Prosecutor's Office of Georgia. Herewith the use of the diplomatic channels for extradition cases is not excluded.

Monaco

The Principality of Monaco declares, in accordance with Article 9, paragraph 1, of the Second Additional Protocol, that it reserves the right not to accept Chapter I of the Protocol.

The Principality of Monaco declares, in accordance with Article 9, paragraph 2.b, of the Second Additional Protocol, that it reserves the right only to accept Chapter II of the Protocol in respect of offences concerning indirect taxes, including VAT, customs and exchange, those relating to direct taxes being excluded.

Netherlands

The Government of the Kingdom of the Netherlands accepts the said Protocol for the Kingdom in Europe.

Declaration contained in a Note Verbale from the Permanent Representation of the Kingdom of the Netherlands, dated 21 July 1993 and registered at the Secretariat General of the Council of Europe on the same day:

The Permanent Mission of the Kingdom of the Netherlands declares that the Government of the Kingdom of the Netherlands, in accordance with Article 5, paragraph 2 of the Additional Protocol to the European Convention on Extradition and in accordance with Article 8, paragraph 2 of the Second Additional Protocol of 17 March 1978, is extending the application of both Protocols to the Netherlands Antilles and Aruba in relation with the Parties, for which the European Convention on Extradition also applies to the Netherlands Antilles and Aruba.

Declaration contained in a Note verbale from the Permanent Representation of the Netherlands, dated 8 February 2006, registered at the Secretariat General of the Council of Europe on 10 February 2006:

On 13 June 2002, the Council of the European Union adopted a framework decision (2002/584/JHA) on the European arrest warrant and the surrender procedures between Member States ("the framework decision"). Article 31 of the framework decision states that, from 1 January 2004, the provisions of the framework decision shall replace the corresponding provisions of the conventions pertaining to extradition that apply in relations between the Member States of the European Union. By Note of 31 August 2005, the Permanent Representation of the Kingdom of the Netherlands informed the Secretary General of the Council of Europe that the European Convention on Extradition, done at Paris on 13 December 1957 ("the Convention"), would no longer be applied in relations between the part of the Kingdom of the Netherlands situated in Europe and the Member States of the European Union that are Parties to the Convention.

Accordingly, the Permanent Representation of the Kingdom of the Netherlands has the honour to confirm that, in view of the foregoing, the Second Additional Protocol to the European Convention on Extradition ("the Second Additional Protocol") is likewise no longer applied in relations between the part of the Kingdom of the Netherlands situated in Europe and the Member States of the European Union that are Parties to the Second Additional Protocol.

The Permanent Representation of the Kingdom of the Netherlands would emphasise that the above in no way alters the application of the Second Additional Protocol in relations between:

- the Netherlands Antilles and Aruba and the Parties to the Second Additional Protocol, or
- the part of the Kingdom of the Netherlands situated in Europe and the Parties to the Second Additional Protocol that are not Member States of the European Union.

Declaration transmitted by a Note verbale from the Permanent Representation of the Netherlands, dated 4 January 2012, registered at the Secretariat General of the Council of Europe on 9 January 2012:

The Protocol remains applicable in the relation between Curaçao, Sint Maarten and the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba) and those States with which notes have been exchanged on the extension of the Convention.

Norway

Pursuant to Article 9, Norway declares that it does not accept Chapters I and V of the Protocol.

Republic of Korea

In respect of Article 5 of the Second Additional Protocol to the Convention, the Republic of Korea declares that it shall communicate through the diplomatic channel in principle, and directly between the Ministries of Justice of the Contracting Parties in urgent cases.

Russian Federation

The Russian Federation reserves the right not to apply Chapter V.

The designated authority of the Russian Federation to consider questions of extradition is the Procurator-General's Office of the Russian Federation.

The Russian Federation shall reserve the right not to apply Chapter V of the Second Additional Protocol of March 17, 1978 to the European Convention on Extradition of December 13, 1957.

Switzerland

Switzerland declares not to accept Chapter II of the Second Additional Protocol to the European Convention on Extradition.

Turkey

The Government of the Republic of Turkey reserves the right to use diplomatic channels in transmitting extradition requests in order to follow-up and carry out the necessary proceedings by diplomatic missions in the requested State, taking into consideration the type of request.

Ukraine

Declaration contained in a letter from the Permanent Representative, dated 31 January 2000, registered at the Secretariat General of the Council of Europe on 1 February 2000:

The Ministry of Justice of Ukraine (in case of requests by courts) and the Prosecutor-General's Office of Ukraine (in case of requests by bodies of pre-trial investigation) shall be the authorities to which reference is made in article 12, paragraph 1 of the Convention, as amended by the Second Additional Protocol.

[...]

United Kingdom

In accordance with paragraph 2 of Article 9, the United Kingdom declares that it does not accept Chapter I, Chapter III, Chapter IV or Chapter V of the Protocol.

Declaration contained in a letter from the Permanent Representative of the United Kingdom, dated 23 April 2003 and registered at the Secretariat General of the Council of Europe on 25 April 2003:

The Government of the United Kingdom declares that the Second Additional Protocol should extend to the Isle of Man and Guernsey, being territories for whose international relations the Government of the United Kingdom is responsible.

Declaration contained in a letter from the Permanent Representative of the United Kingdom, dated 23 April 2003 and registered at the Secretariat General of the Council of Europe on 25 April 2003:

In accordance with paragraph 2 of Article 9, the United Kingdom does not accept, in respect of the Isle of Man and Guernsey, Chapter I, Chapter III, Chapter IV or Chapter V of the Protocol.



GIVEN under my Official Seal,
8 July, 2019.

SIMON COVENEY,
Minister For Foreign Affairs and Trade.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

This Order provides that the European Convention on Extradition, done at Paris on 13 December 1957, will have effect as amended by Chapter II of the Second Additional Protocol to the European Convention on Extradition, done at Strasbourg on 17 March 1978.

Chapter II of the Second Additional Protocol replaces Article 5 of the European Convention on Extradition with the following provisions:

Fiscal offences

1. For offences in connection with taxes, duties, customs and exchange extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature.
2. Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, custom or exchange regulation of the same kind as the law of the requesting Party.

Ireland made a declaration when ratifying the Second Additional Protocol that it does not accept Chapters I, III, IV or V of the Protocol. Accordingly these Chapters of the Second Additional Protocol will not have effect with respect to the State.

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