

## **MODULE II: THE INSTRUMENTS OF JUDICIAL COOPERATION IN CRIMINAL MATTERS IN THE CONTEXT OF THE COUNCIL OF EUROPE.-**

### **TOPIC 4**

## **THE CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS OF 1959.-**

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### **SELF-ASSESSMENT TEST.-**

#### **1) Which of the following statements is correct?**

a) The 1959 ECMACM binds all the members of the Council of Europe because joining this organisation implies the automatic ratification of all the international conventions it has adopted.

b) The 1959 ECMACM can only be signed and ratified by the Member States of the Council of Europe and to date it has been ratified by the organisation's 47 Member States.

c) The 1959 ECMACM is open for signing and ratification by the Member States of the Council of Europe and non-member third states, upon invitation from the Council's Committee of Ministers.

d) The 1959 ECMACM has been ratified by approximately half of the Member States of the Council of Europe, including Spain, France, United Kingdom, Germany and Italy.

***CORRECT ANSWER: C). The 1959 ECMACM follows the general model for Conventions adopted by the Council of Europe, open for signing and ratification by the Member States and third-party states, including non-European ones, who can accede when invited by the Committee of***

***Ministers and with the unanimous agreement of the states who are already party to the Convention (Article 28.1).***

**2) In the event of a dispute between two contracting states to the 1959 ECMACM on the content of any of its provisions, what mechanisms are available to settle such a dispute?**

a) Either of the states could file a complaint for breach of the convention before the European Court of Human Rights, linked to the Council of Europe.

b) Either of the states could bring compulsory arbitration by the European Committee on Crime Problems belonging to the Council of Europe.

c) Either of the parties could take recourse to the obligatory mediation of the Secretary General of the Council of Europe.

d) The 1959 ECMACM does not envisage a legal avenue of dispute resolution and such disputes must be resolved via diplomatic channels.

***CORRECT ANSWER: D). Here again the 1959 ECMACM is in line with the general characteristics of the Council of Europe Conventions, as its articles do not envisage recourse to a pre-established jurisdictional or arbitration body for the resolution of conflicts derived from the interpretation or application of the convention.***

**3) Would it be possible to make a request for mutual assistance under the 1959 ECMACM in relation to an administrative offence related to road traffic or motor vehicles?**

a) Yes, because the objective scope of Article 1.1 of the 1959 ECMACM includes all kinds of offences, regardless of their severity.

b) Yes, although it would only be possible to make the request for international judicial assistance in the context of the jurisdictional procedure involving the challenge of the sanction before the criminal courts, and provided that the legislation of the requesting state attributes competence for hearing the challenge to the courts of this jurisdiction.

c) No, the 1959 ECMACM excludes all kinds of proceedings related to administrative offences from its scope of application.

d) No, because the objective scope of the 1959 ECMACM and its First Additional Protocol only includes administrative offences related to fiscal matters and contraband.

***CORRECT ANSWER: B). The objective scope of the 1959 ECMACM, pursuant to Article 1.1 and the content of the explanatory report, is limited to offences of a criminal nature, although it can be extended to cover administrative offences (such as road traffic and motor vehicle offences) provided that it is the courts in the criminal jurisdiction (and not the contentious-administrative courts) that are responsible for hearing the challenge to the sanctioning administrative resolution.***

**4) For the purposes of the 1959 ECMACM “judicial authorities” are:**

a) The bodies of the Judiciary, of the Public Prosecutor’s Office and of the Ministry of Justice of each of the contracting states to the Convention.

b) The bodies of the Judiciary (including the Constitutional Court) and the parliamentary investigation commissions of each of the contracting states to the Convention.

c) The bodies of the Judiciary of each of the contracting states to the Convention, excluding the authorities of the Public Prosecutor’s Office, as the bodies of the Public Prosecutor’s Office cannot be considered “judicial authorities”, because this would contravene Article 5.3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

d) The authorities that have been designated as such by each of the contracting states to the Convention, even if they are not responsible for performing jurisdictional functions.

***CORRECT ANSWER: D). In order to combine the plurality of criminal justice systems in all of the contracting states to the 1959 ECMACM, Article 24 of the Convention establishes that said states can make a declaration confirming what authorities are to be considered judicial authorities for the purposes of the Convention.***

**5) Which of the following statements is correct?**

a) The 1959 ECMACM is absolutely clear on the principle of executing the request for mutual assistance in the manner established by the legislation of the

requested state (*locus regit actum*), so that the law of the requesting state is completely irrelevant in the fulfilment of the request.

b) The 1959 ECMACM represents an innovation in that it imposes the observance of the procedures required by the law of the requesting state when fulfilling requests for mutual assistance, even when they are not customary in the requested state and provided that they are not contrary to the principles of the legal system of the latter (*forum regit actum* principle).

c) The 1959 ECMACM allows the central authority (Ministry of Justice) of the requested state to decide whether fulfilment of the request for mutual assistance is to be performed pursuant to the law of the requesting state or in line with that of the requested state.

d) The 1959 ECMACM follows the principle that the execution of the request for mutual assistance will be in the manner established by the legislation of the requested state (*locus regit actum*), although in certain cases it allows some of the aspects of the law of the requesting state to be taken into account for the fulfilment of the request for mutual assistance.

***CORRECT ANSWER: D). Although Article 3.1 of the 1959 ECMACM cites the principle of locus regit actum in the execution of letters rogatory, Article 3.2 of the Convention allows the requesting judicial authority to request that witnesses or experts give evidence under oath (even if this is not envisaged in the legal system of the requested state) and Article 7.1 of the Convention allows the judicial authority of the requesting state to ask that the service be made in a different manner to that envisaged by the law of the requested state, provided that it is not incompatible with the internal law of the latter.***

**6) In relation to the attendance of the authorities of the requesting state at the execution of letters rogatory, the 1959 ECMACM:**

a) Allows such attendance when the requesting state expressly so requests and the requested state agrees.

b) Allows foreign judicial authorities to attend, but prohibits other interested parties from attending, as this is contrary to the principles of criminal procedure in the majority of the contracting states.

c) Only allows the judicial authority to attend, although it prohibits the presence of members of the Public Prosecutor's Office or of the bodies responsible for the investigation prior to the hearing.

d) Does not allow the attendance of the authorities of the requesting state under any circumstances, as this would affect the sovereignty of the requested state.

***CORRECT ANSWER: A). Article 4 of the 1959 ECMACM expressly envisages the attendance of the judicial authority from the requesting state at the execution of letters rogatory and even that of other interested parties, provided that the corresponding request has been made to the requested party and it has agreed to it.***

**7) The service of procedural documents and judicial verdicts will be made by the requested party:**

a) By means of ordinary post with acknowledgement of receipt, so that receipt signed and dated by the addressee of the writ or record is the only means of accrediting the service of the same vis-à-vis the requesting state.

b) In the manner established by its internal law and that is analogous to the manner expressly sought by the requesting state or by special means specified by the latter, provided that it is compatible with the internal law of the requested state.

c) By means of simple delivery of the procedural document or judicial verdict in question to the addressee, regardless of the content of the request for mutual assistance.

d) By means of summons, provided that this is not incompatible with the internal law of the requesting state.

***CORRECT ANSWER: B). According to Article 7.1 of the 1959 ECMACM, the requested party will accede to the express petition from the requested party in relation to how the service is to take place, and do so in any special manner that is compatible with its legislation or in any of the ways envisaged by its internal law for analogous notifications. Only in the event that the requesting state does not specify the means can the requested state opt to perform the service by means of simple delivery without any other formality or do so in the manner envisaged by its internal law.***

**8) Which of the following statements is correct?**

a) The 1959 ECMACM establishes the general principle that requests for mutual assistance and annexed documents must be sent in the official language of the requested state.

b) The 1959 ECMACM uses the general principle of not requiring the translation of the request for mutual assistance or of the annexed documents, and they can therefore be sent in the language of the requesting state. Nevertheless, the high number of reservations made by the contracting states has rendered this general principle redundant.

c) The 1959 ECMACM states that the request for mutual assistance and the annexed documents must be translated into one of the two official languages of the Council of Europe (English or French), and envisages that the requested state will not process requests made in any other language.

d) The 1959 ECMACM contains no provisions regarding the language in which requests for mutual assistance should be drafted.

***CORRECT ANSWER: B). Article 16.2 of the 1959 ECMACM allows reservations to be made by virtue of which the contracting states can specify that requests for mutual assistance and annexed documents be accompanied by a translation into one of the official languages of the Council of Europe or into its own language and a numerous group of contracting states have made use of this option.***

**9) In accordance with the 1959 ECMACM the direct transmission of requests for mutual assistance between the judicial authorities of the requesting and requested states:**

a) Is the standard means of transmission of requests for mutual assistance, although it specifies that direct transfer must be made via the International Criminal Police Organisation (INTERPOL).

b) Is reserved for urgent cases when the request refers to procedures for procuring evidence or the transfer of evidence, records and documents.

c) Can be used by the judicial authority of the requesting state when it sees fit, although in such cases a copy of the request for assistance must obligatorily be sent to the Ministry of Justice of the requested state.

d) Is completely excluded, as the 1959 ECMACM establishes the system of central authorities thus surpassing the option of consular or diplomatic channels.

***CORRECT ANSWER: B). Article 15, points 1 and 2, of the 1959 ECMACM is based on the principle of transmission of the letters rogatory mentioned in Articles 3, 4 and 5 of the Convention via central authorities (Ministries of Justice), although it makes an exception for urgent cases.***

**10) The Second Additional Protocol to the 1959 ECMACM:**

a) Is an instrument that is the inspiration behind the 2000 CMACM Convention and has the advantage of including a greater number of states, who, while they are not members of the European Union, do belong to the Council of Europe.

b) Is primarily designed to adapt the system of requests for mutual assistance regarding fiscal offences to that of the requests in relation to criminal offences of an ordinary nature.

c) Is an instrument that has introduced a large number of the innovations in assistance in criminal matters contained in the 2000 CMACM, but which has the disadvantage of not having been signed or ratified by over half of the Member States of the Council of Europe, including the most representative members of the European Union.

d) It is the definitive instrument in judicial cooperation in criminal matters in the sphere of the European Union as, having been ratified by all the states of the Council of Europe which are, in turn, members of the European Union, it has replaced the 2000 CMACM Convention.

***CORRECT ANSWER: C). The Second Additional Protocol to the 1959 ECMACM was clearly inspired by the 2000 CMACM, many of whose provisions it copies literally, although many Member States of the European Union have not signed or ratified it.***