

Self-assessment

Multiple choice questions

1. TOPIC 8.

Were Croatia to join the European Union tomorrow:

- ☐ a) The 2000 Convention would be directly applicable to it, as part of the *acquis communautaire*.
- ☒ b) **The 2000 Convention would be applicable once 90 days had elapsed from the deposit of the corresponding instrument of accession to the Convention.**
- ☐ c) The 2000 Convention would be applicable once the Secretary General of the Council has been informed of the conclusion of the constitutional procedures for the adoption of the Convention.
- ☐ d) The 2000 Convention would be applicable once the contracting states notify the Council of their acceptance.

Comment: *The correct answer is envisaged in Article 28 of the 2000 Convention. Unlike Schengen, the 2000 Convention was not included in the *acquis communautaire*. The third answer, in addition to not envisaging the mandatory term, makes partial reference to the special procedure for entry into force for Norway and Iceland in Article 29.*

2. TOPIC 8.

According to the provisions of the 2000 Convention, requests for mutual assistance:

- ☐ a) Should be translated into one of the official languages of the requested state.
- ☐ b) Should be translated to a language understood by the addressee, to whom it will be sent directly by ordinary post.
- ☐ c) Do not need to be translated, as the purpose of the Convention is to facilitate and speed-up cooperation.
- ☒ d) **May or may not be translated, depending on the provisions of other instruments also applicable to the request, as the 2000 Convention fails to establish any rules in this regard.**

Comment: *The 2000 Convention is supplementary to other instruments, some of which it mentions in Article 1. It does not establish specific rules regarding language, except in relation to the sending and service of procedural documents, which only represent a specific type of mutual assistance, regulated in Article 5, which does refer to direct communication via ordinary post, attached by a simple note with a translation into a language that it is believed the addressee understands. The question, however, refers to requests for mutual assistance in general and, strictly speaking, pursuant to the Convention's system, apart from some exceptions, the sending and service of procedural documents does not require mutual assistance at all.*

3. TOPIC 8.

According to Article 4 of the 2000 Convention, in the execution of a request for mutual assistance:

- ☐ a) The principle of *locus regit actum* will be observed.
- ☐ b) The principle of *forum regit actum* will be observed.
- ☒ c) **The law of the requesting state will apply, if it so requests and the steps in question are compatible with the basic principles of the law of the requested state.**
- ☐ d) The steps requested by the requesting state will be applied, if they coincide with those envisaged in the procedural laws of the requested state.

Comment: *Although the opposite is often maintained, the 2000 Convention does not impose the general application of the legislation of the requesting state in the execution of requests for mutual assistance. It is necessary that the latter so request and specify the steps to be taken and the requested state may oppose it on the grounds of incompatibility with the basic principles of its legal system, a concept that is however different to that of the "procedural laws" referred to in the fourth, incorrect, answer.*

4. TOPIC 8.

In order to send a summons to a witness residing in France, whose address is known:

- ☐ a) A letter rogatory will be sent directly to the competent judicial authority corresponding to the witness's address.
- ☐ b) It will be sent to the witness by ordinary post, together with a note informing him/her of his/her rights, without the need for a translation.
- ☐ c) It will be sent to the witness by ordinary post, together with a note informing him/her of his/her rights, both duly translated into French.
- ☐ d) **It will be sent to the witness by ordinary post, together with a note informing him/her of his/her rights and a translation will not always be necessary.**

Comment: *The reply can be found in Article 5 of the Convention. In theory, it is not one of the exceptional cases that requires the mediation of the competent authorities in the requested state, as it is a question of issuing a summons to a witness whose address is known. The need or otherwise for a translation will depend on the reasons that the authority sending the document has to believe that the witness only understands French, as the fact that he/she resides in France is not sufficient on its own to make a translation necessary.*

5. TOPIC 8.

What kinds of requests for assistance, of those cited below, do not permit direct transmission between judicial authorities pursuant to the system of the 2000 Convention?

- ☐ a) Those that refer to administrative proceedings.
- ☐ b) Those sent to Ireland.
- ☐ c) **Those that refer to the temporary transfer of a detained person for the purposes of investigation.**
- ☐ d) None of the above.

Comment: *The correct answer can be found in Article 6.8 a) of the Convention. In the case of administrative proceedings, direct transfer is possible, albeit between different kinds of authorities. As for Ireland, it is an envisaged declaration, when making the notification foreseen in section 2 of Article 27, which has not been made, as it has not even ratified the 2000 Convention.*

6. TOPIC 8.

Select which of the following is regulated in the 2000 Convention

- ☐ a) Temporary surrender in the context of extradition.
- ☐ b) Transfer of sentenced persons.
- ☐ c) **Temporary transfer of persons held in custody for the purposes of investigation.**
- ☐ d) All of the above.

Comment: *Only the temporary transfer of persons held in custody for the purposes of investigation is regulated in the Convention, in Article 9 to be exact. The transfer of sentenced persons is a very different matter, aimed at allowing the person in question, when the states agree and he/she gives his/her consent, to serve the sentence in the state of which he/she is a national, different to the one in which he/she was sentenced, in order to facilitate his/her rehabilitation. The temporary transfer regulated in Article 9 is, on the other hand, different to the extradition procedure.*

7. TOPIC 8.

Can an accused person be heard via videoconference in accordance with the 2000 Convention?

- ☐ a) No, under no circumstances.
- ☐ b) **Yes, if the Member States agree, and if the accused person consents to it, even this possibility is subject to reservation.**
- ☐ c) Yes, if the Member States agree, but only in cases of transnational organised crime.
- ☐ d) Yes, if the Member States agree and provided that neither of them have made a reservation, although the consent of the accused person is not necessary.

Comment: *The answer can be found in Article 10.9 of the Convention. There are no restrictions based on the crime and there is no absolute prohibition, although consent is required and this provision of the Convention can be the subject of a reservation.*

8. TOPIC 8.

Which of the following statements is correct in relation to the creation of a joint investigation team?

- ☐ a) They can be created between a maximum of five states.
- ☐ b) Eurojust can create this kind of team.
- ☐ c) They must be created for a specific investigation and for a fixed, non-extendable term.
- ☒ d) **The person appointed leader when the team is created will change if the investigation takes place in several Member States.**

Comment: *By elimination: There is no limit on the number of states; Eurojust is not competent to create these teams, although it can suggest that the states create them and, even though they should be created for a specific purpose and a limited term, the latter can be extended with the consent of the states. Meanwhile, as the leader should be a representative of the competent authority participating in the investigation from the Member State where the team is acting and, in the course of the investigation, it may act in several states, there can and should be a change of team leader depending on where the team's investigation is taking place at any given time.*

9. TOPIC 8.

Is it necessary to include a summary of the facts in the requests for the interception of communications pursuant to the 2000 Convention?

- ☒ a) **No, on occasion, not even a request is required, even though the person is in the territory of another Member State.**
- ☐ b) Yes, if the technical assistance of another state is necessary for the interception.
- ☐ c) No, with the sole exception of when subsequent recording and transmission is requested.
- ☐ d) Yes, provided that the person in question is in the territory of the requested state.

Comment: *The interception of communications by means of service providers or without the technical assistance of another state does not, in principle, require a request as such, although in the second case, it is possible that the notified state may request a summary of the facts. In the event the technical assistance of another state is required, the summary of facts is only required when the person is in the requested state, not if he/she is in the requesting state itself or in a third state. In the case of a request for subsequent recording and transmission a summary of the facts is indeed required, but it is not the only exception. And, finally, in the cases set out in the first answer a summary of the facts may not be necessary, even if the person in question is in the territory of the requested state because, strictly speaking, no request was made.*

10. TOPIC 8.

Choose the correct statement from among those made below in relation to the Protocol of 16 October 2001

- ☐ a) It merely regulates forms of assistance related to information on the holders of bank accounts and transactions of that kind, as well as regarding the monitoring of such transactions.
- ☒ b) **It contains general provisions applicable to all kinds of mutual assistance in criminal matters pursuant to the 2000 Convention, of which it forms part.**
- ☐ c) It is a complementary convention to the 2000 Convention, whose rules take precedence in the case of conflict.
- ☐ d) The provisions of the 2000 Convention are not applicable to it in relation to direct transmission between judicial authorities.

Comment: *The Protocol is not a mere supplement to the Convention. They form a single document and contain general provisions applicable to all kinds of assistance, such as the grounds for refusal in Articles 7 to 10.*