

Strasbourg, 20/10/2006

PC-OC (2006) 15

**COMITTEE OF EXPERTS**  
**ON THE OPERATION OF EUROPEAN CONVENTIONS**  
**ON CO-OPERATION IN CRIMINAL MATTERS**  
**(PC-OC)**

52<sup>nd</sup> meeting

**Strasbourg, 18-20/10/2006**

**List of adopted decisions**

**1. Discussion on possible steps and initiatives to improve the efficiency of international co-operation in criminal matters.**

The Committee discussed this item on the basis of the elements prepared by the limited Group of experts, following its first two meetings (doc PC-OC Mod (2006)06).

**1) *PRACTICAL MEASURES***

**a. *Publications***

The Committee welcomed the two publications which have been presented and are expected to be in the bookshops by end of 2006:

- a) a compendium of CoE criminal Conventions (in French, English and possibly in Russian language);
- b) the “explanatory notes and relevant CoE documents on extradition”.

The preparation of additional publications is foreseen, such as explanatory notes on the transfer of sentenced persons and, subsequently, on mutual assistance in criminal matters. The publications will be sold to the public. At a later stage, they will be made available on the web site (and on CD-ROMs). The Secretariat would ensure their regular updating.

**b. *Web site, data base***

The web site of the Committee presents the latest news relating to co-operation in criminal matters as well as the documents related to Committee meetings and links with other web sites and databases. **The Committee found this new presentation of the web site to be a real improvement.** It suggested that additional news and links be inserted.

In addition, **the Committee agreed on a database to be set up**. The database should be as simple as possible and should reply to basic questions related to co-operation with the other States parties to the CoE conventions; extradition, mutual assistance and transfer of sentenced persons will be contemplated in a first step. The Committee requested that the definition of elements to be inserted and the *modus operandi*, including updating, of the database be further elaborated by the limited Group of experts. The Committee also stressed the usefulness of having links to national websites and to national guides of procedures where they exist. The Committee welcomed the idea that a “guide” for practitioners could introduce the database (see document from the Chair, PC-OC Mod (2006)04).

c. Networking

**The Committee decided to propose the setting up of a network of national points of contact** in order to facilitate the efficiency of international co-operation through better personal contacts. The Committee referred to and agreed on the note appended to this document outlining the role and requirements of contact persons. The Committee requested its limited Group of experts to further deal with some modalities of the operation of this network and with matters linked to the access to the list of contact persons. The existing “list of national officials in charge of international co-operation” (PC-OC Inf 6) constitutes a good basis for the development of a network – that list will be updated and will remain available to all Committee members.

d. Office of specialists

The Committee concluded that an Office of specialists in the CoE Secretariat, which would help practitioners on various aspects of the application of the CoE conventions, would be possible only with additional resources, which are presently not available.

e. Newsletter

The Committee welcomed the suggestion that a newsletter will be produced, presenting regularly the latest developments in the field of international co-operation, i.e. for instance, accession to Conventions, important events or conferences, important decisions by international (or national) jurisdictions, important national developments.

**2) NORMATIVE MEASURES**

The Committee decided to deal in a first stage with extradition matters.

a. Extradition

i. Simplified extradition

**The Committee agreed that the 1957 European Convention on Extradition could be revised in order to include mechanisms of simplified extradition** when the person consents to his or her extradition.

The Committee requested its limited Group of experts to proceed with additional work on:

- the application of Art 12 of the convention relating to the requirements of a request of extradition and of documents; the Group will envisage the cases in which the possibility of having information (instead of documents) could suffice in order to proceed with simplified extradition.

- the consequences of the consent as to:
    - o the application of Art 14 of the convention on the specialty rule
    - o the application of Art 15 of the convention on the re-extradition to third States or surrender to international tribunals.
  - the nature of consent and the possibility of withdrawal.
  - the possibility to insert time limits for a decision, after consent, and for actual surrender of the person.
- ii. Grounds for refusal (Art 3, 4, 5 ECE)

The Committee **agreed not to deal with fiscal or military offences at this stage. It requested the limited Group of experts to explore further the matter of political offences**, according notably to developments in the CoE recent Conventions (ex. the Convention on the prevention of terrorism) and in the EU, in particular the European Arrest Warrant (EAW) where, in view of political prosecution, a general clause of non discrimination was included in its Preamble (para. 12).

- iii. Lapse of time (Art 10 ECE)

**The Committee agreed that Art 10, which foresees that the laws of either the requesting or the requested State can be considered, could be revised.** Several experts considered that the laws on lapse of time in the requesting State should prevail in order to decide on extradition. It was however observed that this leads to legal or practical difficulties. The Committee also observed that the EAW foresees (Art 4.4), as an optional ground for refusal, the situation where the prosecution or the punishment is statute barred according to the law of the requested state and where that State has jurisdiction over the acts according to its law. The committee instructed the limited Group of experts to work further on this matter.

- iv. Reservations (Art 26 ECE)

**The Committee decided to bring the following proposals to the CDPC for consideration:**

- reservations should be limited to specific provisions;
- existing reservations could be reviewed and, where necessary, updated or withdrawn,
- a limited duration of validity could be envisaged for future reservations. The interest of such a limitation should however be balanced with the interest to have as many States as possible ratifying the instrument and with the necessity of an efficient co-operation.

- v. Rule of specialty (Art 14 ECE)

The Committee took note of the various questions presented by the limited Group of experts and by Committee members related to the situation where a person renounces the benefit of the specialty rule after his or her extradition. It instructed the limited Group of experts to prepare elements of reply to these questions as well as suggestions for possible normative developments.

- vi. Time limits

The Committee considered that it would be difficult to insert strict time limits in a binding instrument. It requested its limited Group of experts to identify possible measures to include

in a **non binding instrument** so as to reduce time limits and avoid long extradition procedures.

vii. Compensation

The Committee took note of the difficult question of compensation, in particular in the following cases: where a person was extradited and then acquitted; where a person is arrested and the extradition request is subsequently withdrawn and where a person is arrested and the requested State then refuses the extradition. It also took note of the question of the return of the extradited person to the requested State in case of acquittal. It requested that the limited Group of experts explore further the need for normative developments on these issues and report with possible suggestions.

viii. Dispute settlement

The Committee instructed its limited Group of experts to return to this issue taking into account notably documents made available to the Committee as well as the results of the forthcoming conference in Moscow (9-10 November 2006) on international co-operation in criminal justice matters.

ix. Language (Art 12 ECE)

The Committee agreed that, considering the wide variety of national legislation and practice among States, various solutions could be envisaged, for instance in a **non binding instrument outlining best practices** to be followed by States. Such an instrument could identify which documents or which information should be transmitted to the requested State and translated, with reference to Art 12 ECE.

x. Documentation (Art 12 ECE)

The Committee discussed on the application of Art 12.2 as related to the transmission of documents or information in the context of extradition procedures. Further work will have to be carried out by the Group of experts on this.

xi. Channels/means of communication (Art 12 ECE and Art 5, 2<sup>nd</sup> Protocol)

**The Committee agreed that these articles could possibly be updated** in order to refer not only to diplomatic channels or to Ministries of Justice, but to the central authority "as defined by each Party by declaration". **It decided to present this proposal to the CDPC for consideration.**

It further instructed the limited Group of experts to consider the possibility of normative developments as regards the **practical measures of communication** in application of the Convention (post, fax, e-mail).

xii. Model form for request

The Committee agreed that there is no added value in developing a model form for extradition requests.

xiii. Procedural safeguards

The Committee examined the suggestions aiming at increasing the protection of individual freedoms and guarantees in extradition procedures. Several members observed that States were already bound to respect such rights and guarantees according to existing Conventions

and that, in addition, due consideration will have to be taken on the results of the discussions in the EU on a draft Framework Decision on procedural guarantees. **The Committee agreed that this was an important question and instructed its limited Group of experts to work further on concrete suggestions.**

xiv. Concurrent requests (Art 17 ECE)

The Committee instructed the limited Group of experts to deal further with this issue, notably in cases of concurrent requests for surrender issued by an international criminal jurisdiction.

***Longer term issues***

The Committee, according to the instructions of the CDPC, discussed the following issues in the perspective of longer term results:

i. Extradition of nationals (Art 6 ECE)

The Committee agreed that discussion should be resumed at a later stage notably in connection with the application of the principle "*aut dedere aut judicare*". It instructed its limited Group of experts to envisage concrete suggestions regarding that matter, notably as relates to the transmission of evidence by the requesting State and the links with the application of the convention on the transmission of criminal proceedings (ETS 73).

ii. *Ne bis in idem* (Art 9 ECE)

The Committee noted the need to come back later to this issue, notably in order to clarify some ambiguities in the languages of the instruments ("offences" against "faits"). It referred to recent decisions by the Court of Justice in Luxembourg on the matter.

b. *As to other Conventions:*

i. Mutual assistance

The Committee agreed that it is too early to discuss the modernisation of a mechanism which has been recently updated by a 2<sup>nd</sup> additional Protocol (ratified by 12 States). Some practical applications of the convention and its Protocols could however be discussed further, such as the application of Art 22 on the transmission of information from criminal records.

ii. Transfer of sentenced persons

The Committee agreed that normative developments, binding or not binding, could be envisaged as regards notably:

- the consent of the detainee and its revocability;
- an obligation to inform the executing State of any contagious illness contracted by the sentenced person;
- the transfer of mentally disturbed offenders.

It instructed the limited Group of experts to work further on these issues.

iii. Transmission of criminal proceedings

The Committee underlined the positive aspects of the Convention on the transmission of criminal proceedings (ETS 73) and instructed its Group of experts to look further into its status of ratification and into matters pertaining to its application.

iv. Other

The Committee agreed that, while working in priority on extradition matters, it might identify elements related to the application of other Conventions, which would be dealt with at a later stage.

## **2. Questions related to the practical application of the Conventions**

The Committee discussed the application of the European Convention on Extradition on the basis of a concrete question raised by the expert of the Russian Federation, related to requests of extradition in cases of crimes of lesser importance.

## **3. Points for information**

The Committee took note of the presentation made by the expert from Finland on behalf of the EU Presidency, on initiatives in the EU related to matters of international co-operation.

The Committee was informed on the status of preparation of the conference on "improving European co-operation in the criminal justice field" (Moscow, 9-10 November 2006), in which many Ministers from CoE member States are expected to participate. The Committee asked to be kept informed of the results of the Conference, which will be important for its future work.

It took note of the presentation by the expert from Greece on the discussions, in the EU, on a Framework Decision on the enforcement order and the transfer of sentenced persons and underlined the relation with the CoE Convention on transfer and its Protocol. It suggested that the presentation be made available in writing to the members.

It was also informed on the status of work in the PC-ES, notably as far as judicial co-operation is concerned. The Committee referred to previous works which may be of interest of the PC-ES, notably on collecting DNA samples.

## **4. Election of a new Chair of the Committee**

The Committee elected Mrs Barbara GOETH-FLEMMISH (Austria) as chair of the Committee, for a period of one year. Mrs Joana GOMES FERREIRA (Portugal) will continue to act as Vice Chair, following her election in March 2006.

## **5. Next meetings, conclusion and closing of the meeting**

The Committee was informed that, for budgetary reasons, it would have only one meeting in 2007. It suggested organising two meetings of its limited Group of experts before the plenary session of the CDPC (June 2007). The results of the Group's meetings will be communicated to the PC-OC members for comments by written procedure. On that basis, the PC-OC findings and suggestions will be brought to the CDPC for decisions and instructions, mainly as far as normative developments are concerned. The next plenary meeting of the PC-OC could take place after the summer of 2007.

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**Increasing the efficiency of international co-operation in criminal matters:  
Proposal to promote networking among points of contacts  
from the Council of Europe member States**

Strasbourg, 17 October 2006

Presentation

The PC-OC already fulfils an essential role in promoting networking among national authorities in charge of judicial co-operation. In addition, regional and multilateral activities conducted under the CoE programmes of assistance further promote networking among practitioners and judicial actors.

It is felt that the existing "list of national officials in charge of international co-operation" set up by the PC-OC (PC-OC Inf 6) constitutes an excellent basis for the development of a network. That list could however be simplified: the number of persons presented by each member States as contact persons could be reduced to a maximum of 2 to 3 per State, with their complete contact details, including e-mails (and, where available the contacts to be reached beyond the working hours). These contact persons would form a network aimed at increasing the efficiency of international co-operation. be easily reachable and could be contacted

Role of contact persons

The contact person is expected to:

- a) Reply to requests related to co-operation or contacting the proper person or giving information on how to contact the proper person. The elements to be included inter alia:
  - a. Preliminary information on the competent authority
  - b. Information on feasibility of action necessary in view of investigation or on the best way to tailor a proper request of judicial co-operation;
- b) Speed up, upon request, the execution of a request for judicial co-operation notably by contacting the proper person, body or institution;
- c) Giving information on the relevant applicable (national or foreign) law or on specific questions on the national legal system;
- d) Diffusing the relevant information both towards the other members of the network and to their national competent authorities;
- e) Updating or securing the updating by the competent national authorities as to the information given to the CoE's Secretariat which are put on the web site/database
- f) Developing personal contacts in order to increase the efficiency of transnational procedures;
- g) Be the national correspondent of the newsletter, i.e. collecting information at national level, transmitting to the CoE Secretariat and diffusing at national level.

Requirements

The contact persons should have

- a) the necessary competence on judicial co-operation at large,
- b) be available, easily contactable and committed to efficiently deal with requests put to him/her,
- c) knowledge of languages (English, French).

The list of names of contact persons (CP) would be available among all persons present on the list and to the PC-OC members. It could be accessible through the database. If the Committee decides that the access should be restricted, a password would be provided to each CP and PC-OC members. The possibility to have it available to the judicial authorities and to the law enforcement agencies dealing with judicial co-operation could be envisaged (should this be left to the discretion of each State/central authority)?

### Newsletter

The Group agreed that better and more extensive diffusion of information pertaining to judicial co-operation is needed. Practitioners / PC-OC members will be encouraged to communicate news to the Secretariat which could disseminate them through the web site and by e-mail, for instance in the form of a **newsletter**.

The Newsletter could present:

- information on new measures (legislative or non normative) at national level
- information on relevant decisions (case law) at national level (in particular supreme court), relevant information on ECHR and on CJEC might be useful
- questions in relations to conventions.

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**COMITTEE OF EXPERTS**  
**ON THE OPERATION OF EUROPEAN CONVENTIONS**  
**ON CO-OPERATION IN CRIMINAL MATTERS**

**COMITE D'EXPERTS**  
**SUR LE FONCTIONNEMENT DES CONVENTIONS EUROPEENNES**  
**SUR LA COOPERATION DANS LE DOMAINE PENAL**  
**(PC-OC)**

2<sup>nd</sup> meeting of the restricted Group of experts on international co-operation  
 2<sup>ème</sup> réunion du Groupe limité d'experts sur la coopération internationale  
 (PC-OC Mod)

Strasbourg, 16-17/10/2006– Room /Salle 3

**Agenda**  
**Ordre du jour**

1. Opening of the meeting / *Ouverture de la réunion*
2. Adoption of the agenda / *Adoption de l'ordre du jour*
3. Discussion on possible steps and initiatives to improve the efficiency of international co-operation in criminal matters /  
*Discussion sur les démarches et initiatives envisageables pour améliorer l'efficacité de la coopération internationale dans le domaine pénal*

Réf : document PC-OC Mod (2006)02 : discussion paper proposed by the Secretariat

- Extradition / *Extradition*
- Mutual assistance / *Entraide judiciaire*
- Transfer of sentenced persons / *Transfèrement des personnes condamnées*
- Other (Transfer of criminal proceedings ?) / *Autres (transfèrement des procédures répressives ?)*

4. Conclusions from the first two meetings of the Group and closing of the meeting / *conclusions suite aux deux premières réunions du Groupe et clôture de la réunion*

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