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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 17/10/2006 **PC-OC Mod (2006) 06**

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

2nd meeting of the restricted Group of experts on international co-operation (PC-OC Mod)

Strasbourg, 16-17 October 2006

Draft meeting report

1. **Opening of the meeting**
The Chair of the Committee, Mr. Eugenio Selvaggi, opened the meeting. Having reminded the members of the group on the background of this exercise and of the main outcomes from the 1st meeting, he emphasised the need for concrete results to be agreed on the outstanding matters, in order to be presented to the plenary later in the week (18-20 October 2006).
The Head of the Division of Criminal Justice, Ms Bridget O'Loughlin informed the participants of the results of the 27th Conference of European Ministers of Justice, which took place in Yerevan on 11-13 October. The Conference dealt with "Victims: place, rights and assistance". The Ministers agreed on future priority work to be carried out under the auspices of the CDPC; they notably deal with restorative justice, violence against the partners and violence against specific groups of vulnerable victims.

2. **Adoption of the agenda**
The draft agenda was adopted.

3. **Discussion on possible steps and initiatives to improve the efficiency of international co-operation in criminal matters**
The Group discussed the various practical measures and normative initiatives which would contribute to improve the efficiency of international co-operation. The result of the discussions appears in Appendix I to this report.

4. **Follow up and working methods**
This meeting report will be presented to the members of the PC-OC and discuss in the plenary at its 52nd meeting (18-20 October).

5. **Other**
The Conference on "improving European coo-operation in criminal matters", to be held in Moscow on 9-10 November 2006, was introduced. The participation of about 15 full Ministers from Member States is announced.

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Appendix I:

Measures to improve the efficiency of International co-operation in criminal matters
Outcome of the first two meetings of the restricted group of experts
21-22 September and 16-17 October 2006

[Sentences in BOLD correspond to results of the 2nd meeting]

I. PRACTICAL MEASURES

1) Compendium of texts, explanatory notes

Two publications are expected to be ready by end October 2006 and presented at the Moscow Conference on "Improving European co-operation in criminal matters (9-10 November 2006):

a) the publication of the CoE texts on co-operation against crime, which collects the CoE criminal conventions and protocols, presented by subject matter: extradition, mutual assistance, terrorism, economic crimes, etc. (in French, English and possibly in Russian language);
b) the publication of the "explanatory notes and relevant CoE documents on extradition", presenting, for each article of the convention on extradition and its protocols, the text of the convention, the extract from the explanatory report as well as the "comments" which are taken from relevant CoE recommendations and from meeting reports of the PC-OC, when dealing with the application of the article at stake. A research on the standards applicable to persons in transnational criminal proceedings (presenting the main findings from the ECtHR) is added, as well as the texts of the CoE Resolutions and Recommendations.

The preparation of additional publications is foreseen, such as explanatory notes on mutual assistance in criminal matters and explanatory notes on the transfer of sentenced persons. Their realisation will however depend on additional resources to the Secretariat.

The publications will most probably be sold to the public. At a later stage, an electronic version, with all relevant hyperlinks, will be put on the web and will be accessible to the public. The Secretariat will enquire on the possibilities to:
- have the publication available through CD-Roms and
- download the publication from the web site (freely or with charge).

The Secretariat would ensure a regular update of the publication (updates would be highlighted). Updated editions of the books might be envisaged, where necessary/opportune.

These publications could help very much practitioners. It is suggested therefore that they should be available made to the public (for instance through the web site) as soon as it is practicably possible.

2) Web site, data base

a) The web site of the Committee provides with useful guidance to the Committee members by showing all documents relevant for the Committee's work as well as for practitioners in judicial co-operation.
The broader transnational criminal justice web site (www.coe.int/tcj) provides with the most relevant instruments of international co-operation (CoE Conventions, Recommendations) and tools for their implementation elaborated in the framework of the PC-OC.

The Web site could also present in the future the newest developments in the field of international co-operation, be it related to the Conventions (new accession, new reservation,…) or – upon information received by the Secretariat – to their application by States (novelties in other fora, important judicial decisions, etc). The same information could be forwarded by mailing lists to the members of the PC-OC and/or the points of contacts (see below), who, in turn, would be responsible for disseminating the information to national interested persons or institutions.

Additional links should also be offered on the web on:
- the most relevant international/regional instruments
- existing databases (EJN, Interpol, PACO Manual, CoE treaty web site).

b) The PC-OC report to the CDPC, following the New Start, report suggested the setting up of a database presenting all international legal instruments (universal, regional and bilateral), relevant national law and practice as well as caselaw.
The setting up of such a database would require additional resources: sophisticated (and expensive) software and staff. These additional resources are not available at present.

Instead, there might be a possibility for the CoE to develop a simpler data base, focusing on national information deemed essential as far as efficient co-operation is concerned.
It could contain, for each country, the following elements:
- the competent authority / to whom a request should be sent to
- languages requirements
- time limits
- documentation
- statutes of limitation for special offences
- double criminality
- extradition of nationals
- means of communication
- other/particularly relevant information **(which could include national legislation, national guides on procedure, …)**

The name of the contact person (see below under *3) Networking*) could also be inserted.

Mutatis mutandis, this scheme would apply, for the three main Conventions: extradition, mutual assistance and transfer of sentenced persons. For the latter specific questions could deal with matters such as: conditional release, transfer of "residents", transfer of mentally disordered persons, continued enforcement or transformation of the sentence;…

The elements should be available in English. **Data could be communicated to the secretariat in either of the CoE official languages. The Secretariat could take care of the translation in English.**

They could be given to the Secretariat by the national expert member of the PC-OC **or through the national contact person**. The Secretariat will regularly consult each representative or contact person in order to ensure the accuracy of the data **(the newest developments should appear in a visible way in the database**).

It has been agreed that the Chair would elaborate introductory and practical information on the basics of international co-operation, which could introduce the database.

The contribution by the Chair on the database and on a guide to help practitioners has been considered in the discussion.

3) Networking

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" (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 should 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). The persons to be presented should have the necessary competence and be available and committed to efficiently deal with requests put to him/her.

To the extent possible, it would be desirable that members of the PC-OC are also acting as points of contacts.

Such a list would be available among all persons present on the list and to the 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. A question remains whether it would be useful or opportune to have it available to the public at large.

Once the list is completed, the members should be encouraged to act in a responsible manner, both:
- in replying to requests related to co-operation and
- in diffusing the relevant information both towards the other members of the network and to their national competent authorities.

The Chair could prepare a contribution, by the next meeting, in co-operation with Joana Gomes Ferreira, on the expected role of the contact persons in such a network.

An inaugural meeting of these contact persons could be envisaged in connection with a forthcoming PC-OC meeting. This would not create an extraordinary additional burden for the budget (the PC-OC members would have 1 extra day per diem and the other national delegates would pay for themselves). Such a meeting could help in
- adopting best practices on the way to concretely and efficiently dealing with co-operation requests as well as
- developing personal contacts and hence increase trust and confidence among members of such a network, which is considered as being crucial in order to make judicial co-operation more effective.

The Group agreed on the note appended to this document, which presents the main elements related to the network and to the contact points. It based its discussion on the contributions elaborated by the Chair and by Ms Gomes Ferreira.

4) Office of specialists

The tasks devoted to an office of specialists are to some extent covered by the Secretary of the Committee who answers, as far as possible, to specific questions brought to him.

The Secretariat receives an average of approx. 10 requests per year. Most of them come from individuals and relate to requests for transfers. The Secretariat succeeds to handle them within relatively short periods of time.

The functions of an Office of specialist could certainly be enlarged with a view to play a more proactive role and, by doing so, contributing to the efforts to build an efficient and reliable network and to make CoE instruments more visible (see also the reference to a "newsletter", below, under 5.). Such endeavour could however be envisaged only with a reinforcement of the Secretariat, for instance through the secondment of a competent lawyer to the Council of Europe Secretariat.

5) Other

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**.

A sample of such newsletter could be prepared by the Secretariat, upon contributions by the Chair and other Group members. It will be presented at the forthcoming plenary meeting.

II. NORMATIVE TEXTS

1) Extradition

1. Simplified extradition:

The extradition could be simplified and the time limits could be considerably shortened in cases where the requested person consents to his/her surrender to the requesting State. Elements from the EU Convention on simplified extradition procedure (1995)[1] could be examined.

As it seems, several member States already have the legal basis or even apply simplified extradition. Practice shows the many advantages of such a procedure, which *i.a.* considerably reduces the duration of detention in the requested State.

The following elements could be considered being inserted in CoE mechanisms on extradition:

a) the reduction of the documents requested by Art 12 ECE (the request and supporting documents);
b) the consent of the person and of the requested State;
c) the notification of the decision;
d) the time limits for the decision and for the surrender.

The question of the renunciation of the speciality rule and of its consequences deserves further consideration. The speciality rule is indeed perceived in two ways:

- on the one hand, it relates to the rights of individuals not to be prosecuted in the requesting State for other crimes than the ones for which he/she has been extradited.

[1] Available through the EU web site (click here)

- on the other hand, it is linked to the exercise of States sovereignty and to grounds for refusing an extradition.

Any renouncement to the speciality rule by an individual should therefore be protected by some guarantees (access to lawyer, interpreter…). For some States, it is difficult to envisage to easily renounce to the speciality rule.

It was agreed that B. Bohacik and E. Jenni would prepare, in consultation with the Chair, some structured elements for the forthcoming discussion (16-17 October).

It will also be requested to all PC-OC members to prepare, for the forthcoming meeting their national legislation and practice regarding the simplified extradition.

As a conclusion, the members of the Group considered that it is important to find a solution which is acceptable by all but which should in no way hinder the existing practice on simplified extradition.

At the 2nd meeting, following a thorough discussion based of the contribution by Mr E. Jenni (Switzerland), further completed by the contribution by Mr B. Bohacik (Slovakia), the Group agreed that

1) **<u>the PC-OC should consider the revision of the European Convention on extradition</u> in order to insert simplified extradition mechanisms. It is understood that a simplified extradition mechanisms is in the interest of the person sought (reduction of time in detention in the requested State), as well as of the requested State (less persons in detention premises) and of the requesting State (interest of fair and speedy trial).**
2) **<u>As to the need for a formal request</u> of extradition to be sent in the case of simplified extradition, the Group expressed different opinions. For some members, such a request is needed, for others, it is not needed (an arrest warrant with the relevant information is sufficient) and for some others, it can be left to the requested State to decide if the request is needed or not. As an alternative, if the request is not needed, the requested State could ask a confirmation that the person is thought by the competent authority in the requesting state.**
3) **<u>As to the documents</u> to be transmitted in a simplified procedure, the group was of the opinion that it could be appropriate to identify which information, rather than documents, was needed. The requirement of Art 12 ECE could be simplified in this respect (but should remain compatible with the possibility for the speciality rule to apply).**
4) **<u>As to the consent</u> to be given: it should be voluntary, conscious, given in presence of the defence counsel and of the interpreter if needed and in full awareness of the legal consequences. In principle, the consent should not be revocable (see Art 13.4 EAW). Cases might be envisaged where the consent may be withdrawn, at the latest when a decision on extradition is taken.**
5) **<u>As to the consequences of the consent:</u>**
    a. **The consent should not deprive the requested State to invoke a ground for refusal set forth in the Convention.**
    b. **In terms of the speciality rule, the group has identified different options (see Art 7.1 EU Convention '95): either the person's consent has no consequence on the speciality rule, or the person can consent and renounce to the speciality rule or it is to the Requesting State to inform the requested State of a non application of the rule, with a possibility for the requested State to oppose. For other applications of the speciality rule, see below item 5. See also Art 10 EU Convention '96.**
6) **<u>Time limits</u>: this depends on solutions to questions related to the necessity of a formal request and of documents (possibly to be translated). Time limits could**

be envisaged for the decision on surrender, once the consent is given, and for the actual surrender, after the decision is taken (20 days maximum?).

7) **Re-extradition to third parties: the question to a third States (party or not party to the Convention) has been raised but would need further discussion, depending notably on the elements agreed upon under the questions of consent and speciality rule.**

2. Grounds for refusal:

The grounds for refusals could be reduced; they could aim primarily at ensuring the respect of the person's fundamental rights and of the non discrimination principle (see below under 3.). Developments in the EU could be considered in this regard, in particular in the EU Convention on extradition (1996)[2] and in the EU European Arrest Warrant (2002)[3].

a. Political offence:

However rarely invoked in practice, this ground of refusal is potentially an obstacle to effective co-operation. It should therefore as far as possible be limited.

Consideration can be made to the work underway by Interpol. In order to limit the application of such clause, a series of offences have been identified, for which the political offence should not be invoked by States as a ground for refusal.

Could a general clause on non discrimination have the same effect (see Art 12. of the EAW preamble[4] and Art 21 of the CoE convention on prevention of terrorism)?

Consideration could also been given to Mr Zimin's proposal[5] that offences provided for in criminal conventions ratified by both parties could not be invoked as political offences (see Art 20 CoE convention on prevention of terrorism). The political offence clause should also be excluded for offences provided for in international humanitarian law (war, genocide, crimes against humanity).

b. Military offence (Art 4 ECE):

Is the provision on exclusion of such offence from the extradition mechanisms necessary? It is not mentioned in the CoE modern instruments nor in the EU Convention (1996) or in the EAW.

This provision does however not seem to create difficulties in practice. In addition, in the context of Interpol, States are not supposed to circulate persons for military offences.

Discussion on a possible removal of this ground of refusal should therefore be envisaged only if a complete re-drafting of the Convention is decided.

c. Fiscal offence:

Should Art 2 of the 2nd additional protocol to the ECE be kept as it is or should it evolve towards the optional ground for refusal, as set forth in the EAW (Art 4.1[6])?

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[2] Available through the EU web site (click here)

[3] Available through the EU web site (click here)

[4] Art 12 of the Preamble on the EAW: "This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union(7), in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons."

[5] See in PC-OC (2005)22.

[6] Art 4.1, EAW: "The executing judicial authority may refuse to execute the European arrest warrant:1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not

As it is the case for the military offences, some members of the Group considered that this issue should possibly be discussed only if a complete re-drafting of the Convention is decided.

3. Lapse of time (Art. 10 ECE)

In the current mechanism, the lapse of time has to be considered both in the requesting and in the requested States and increases therefore the risk of obstacle to extradition.

It is suggested that, as provided for in the Schengen agreement (Art. 62[7]), lapse of time is considered only according to the law of the requesting State.

The Group invites the PC-OC to consider this proposal, keeping in mind the links with the double criminality issue (if lapse of time is effective in the requested State, is the offence still covered by the double criminality requirement – as defined by national law or judicial decisions?).

4. Reservations

Reservations should be limited to specific provisions.

Existing reservations could be reviewed and updated or withdrawn.

As to future reservations, a limited duration of validity could be envisaged (3, 5 or 10 years – See Art. 7, EU Convention and Art 20.5 of the Convention on prevention of terrorism). 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.

5. Rule of speciality

The principle could be reaffirmed.

Renunciation to the speciality rule could be envisaged:

a) in case of simplified extradition, if the person consents (see above 1.)
b) following the surrender, before the requesting State's judicial authorities.

In the latter situation, the following practical questions need further discussion: should such consent be transmitted to the requested State? Would the requesting State need the agreement of the requested State before prosecuting the person? Should the safeguards of Art. 13 EAW apply in this case as well (the consent should be expressed "voluntarily and in full awareness of the consequences", right to legal counsel). Should all documents and evidence be sent to the requesting State? How? Should a model form be used for receiving the consent of the person?

6. Time limits

Specific time limits in case of simplified extradition could be inserted.

As to time limits for the extradition procedure, any time limit has to be compatible with

a) the imperatives of procedures in the judicial and political phases
b) the effective exercise of the requested person's rights.

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constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;"

[7] Art 62, Schengen agreement: "As regards interruption of limitation of actions, only the provisions of the requesting Contracting Party shall apply."

The Group considered that it would not be realistic to insert strict time limits in a binding instrument, as national procedures differ too widely among States.
A non binding instrument could be more appropriate, outlining different possible measures to reduce time limits and avoid long procedures (and long detention before extradition).

The need for expedient procedure applies for extradition for the purpose of prosecution as well as for the purpose of executing a sentence, in particular considering the fact that it seems that this period of detention pending extradition is not taken into consideration by all States.

7. Compensation for the extradited or requested person

Three hypotheses have been identified and discussed:

a) *the person is extradited and then acquitted in the requesting State:*
That State could be held responsible and be asked to pay compensation (at least to cover the detention period) and to provide with the possibility for the person to return to the requested State. Some States compensate for detention and pay for the return of the person. Some other do not consider that they liable to compensate in such cases.
Some members observed that the acquittal may be caused by factors not dependent from the requesting State (ex: the requested State did not provide with evidence or the person's lawyer provide with information on a decision related to same facts in a third country - *ne bis in idem*). The question of compensation is to be clarified in such cases.

b) *the person is arrested in the requested State and the requesting State withdraws its request of extradition:*
Compensation could be provided by the requesting State.
A member underlined that this could also apply if the requesting State sends the extradition request too late.
In one State, compensation is paid by the requested State, which took the responsibility to affect the person's rights and freedoms.
The same could apply for instance if an authority from the requesting State does not in fact take the person over, despite a positive decision on extradition.

c) *the person is arrested in the requested State which refuses to extradite the person, following a period of detention:*
If a compensation is to be granted in such a case, it could be provided either by the requesting State, which issued the request and lead to the detention, or by the requested State, who effectively arrested the person.

The Group is submitting this question to the plenary, as it seems that practice, in terms of compensation widely varies among States. An approximation of legislation or practice would be desirable in this matter.

8. Language (Art 23 ECE)

A proposal was made to the effect that a request for extradition would have better chances to be quickly handled in the requested State if the request is addressed in the language of that State. As it seems, this constitutes a usual practice for some States. However, this could create practical difficulties in some States where access to translators to the various languages of CoE member States is difficult. Such States would easier find translators in CoE official languages (with the risk that the same documents would have to be translated again in the language of the requested State). The group concluded that, considering the wide variety of national legislation and practice among States, various solutions could be envisaged 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 and translated, with reference to Art 12 ECE.

A distinction could be made between the two types of requests

- **an extradition for the purpose of executing a sentence: it could be sufficient to have the most relevant information (person X has been sentenced by court Y + date for facts Z, constituting crimes ZZ) without having to translate the full verdict.**
- **An extradition for the purpose of prosecution: information that "person X is charged with crime Y with a possible sentence of Z" could be sufficient. As such, there is little use of having a full national arrest warrant with all the appendices to be sent and translated.**

9. **Means and channels of communication**

The Group suggests that full use is made of Art 5 of the 2nd additional protocol to the ECE, ratified by 40 States: "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."

Parties are also encouraged to make agreements on the use electronic means of communication (e-mails).

10. **Model form for request**

The group found no added value in developing a model form for extradition requests. It might consider such a form for MLA requests (on the basis of previous PC-OC works).

11. **Dispute settlement**

The ECE does not have any mechanism of dispute settlement. Reference is made to the Secretariat note on dispute settlement and to the proposal form the Russian Federation. The Group is expecting results from the Conference on European co-operation to be held in Moscow on 9-10 November on this topic. Due consideration will also be given to mechanisms foreseen in the recent CoE conventions, with or without a role for the CDPC.

12. **Rights of individuals:**

The following individual's rights could be inserted in the CoE instruments on extradition[8]:

a. **Fundamental rights as ground for refusal?**

The Group felt that the fundamental rights (mainly right to life, rights not to be tortured or to be subject to inhumane or degrading treatment) are protected by the ECHR and by the UN Convention on torture. There is no need to amend the extradition Convention on this. The case law of the Court provides with sufficient guarantees. A general non-discrimination clause could however be envisaged. This could be further discussed in the Group.

b. **Procedural rights**

The Group agreed that the following rights should be respected in the requested State. They should however be subject to more discussions at a subsequent meeting of the Group.

[8] Backroung information is to be found essentially in the PC-TJ final report (PC-TJ(2005)10) and in the research made by Ms Azaria (PC-TJ(2005)07).

a) Right to be informed,

An access to the file should be provided to the extent that the person has sufficient information as to enable him/her to efficiently exercise the right to challenge the legality of the detention and the right of an effective legal remedy. Information could therefore include: the extradition request, the facts on which it is based, the conditions and the procedure of extradition as well as the persons rights to legal assistance (free of charge if he or she cannot pay). The reasons for the arrest could also be mentioned.
Information should be provided "promptly" (to be defined). It should also be made available to the person's lawyer, in order to be able to exercise the person's rights. It should be given in a language that the person understands.

b) Access to legal counsel

Such access should be provided during the extradition procedure, with a view to ensure the possibility to exercise the rights provided for in Art 5.4 and 13 of ECHR. Free legal aid should be provided when necessary. The access to legal counsel is to be provided "as early as possible" (to be defined).

c) Access to interpreter

The information provided for above (a.) should be given in a language that the person understands (i.e. also a non technical language).

d) Right to expedient procedure

Expedient procedure is aimed at reducing the period of arrest pending extradition in the requested state and allowing therefore the criminal charges to be examined in the requesting State according to Art 6 ECHR. The expediency is to be combined with the rights of the requested person to challenge the legality of his detention and with the rights of effective remedy in case of human rights violations.

e) Right to challenge the lawfulness of the detention

The lawfulness is to be speedily reviewed by a court. The persons should enjoy the rights of defense foreseen under Art 6.3 ECHR.

f) Right to be heard on the extradition

The person concerned should be heard on the arguments which he/she invokes against the extradition[9].

c. Trial in absentia (Art 3, 2nd add. Protocol)
The guarantees of Art 3 seem to be adequate. A non binding instrument could elaborate more on the practical application of that principle, notably the possibility to have information on retrial to be inserted in the formal request).

d. Right to compensation
Could a person be entitled to compensation if he has been unlawfully arrested or detained? Considering the variety of legislation and practice, the group decided to come back to this issue at a later stage.

As instructed by the CDPC, the Group also discussed the following item, preparing elements for a longer term decision:

1. Extradition of nationals

[9] CoE Recommendation Nr R(80)7

Members of the group confirmed that this is a delicate question on which it is difficult to elaborate new solutions. States could however be encouraged not to consider the nationality or residenship of a requested person as a ground for refusal (see Art. 7 of the EU Convention, with the possibility of reservations).

Rather, considering each case on its merits, solutions can be found by using the already existing provisions in the CoE instruments; these are:

- the prosecution of a national by a requested State which refuses to extradite him/her, in application of the principle "*aut dedere aut judicare*", as foreseen in Art 6.2 ECE. Two limits have been identified: (1) a conventional obligation might conflict with the principle, in some States, that the decision to prosecute or not is of discretionary nature and (2) some States do not have extraterritorial jurisdiction to prosecute the facts. In addition, a local prosecution might be hindered by the non-transmission of all necessary documents by the requesting State. A mandatory application of the principle might therefore be difficult to envisage. Due consideration could be given to the wording of recent CoE Conventions (eg: Art 18 of the convention on Prevention of Terrorism[10]).
- The transmission of the criminal proceedings to the requested State for the purpose of prosecuting its national, in application of the convention on transmission of criminal proceedings (which requires much more ratifications in order to really offer an alternative).

The extradition of a national can also be subject to the condition that the person would return after the judicial decision for the purpose of executing the sentence (the so called "Dutch clause"). This faculty is enshrined in Art 5.3 of the EAW.

The question on the legal basis for the return of the person could then be clarified. Elements from the ongoing discussion within the EU on this matter could be considered. If it is to be applied in application of the European Convention on the transfer of sentenced persons, the conditions set forth in that convention, such as double criminality, apply. The interpretation of this specific requirement (be it *in concreto* or *in abstracto*) is then to be verified. Time limits could be agreed upon, by which the transfer is to be achieved. Instead, if it is considered as a condition for extradition, the applicable conditions for the return are set forth in national legislation.

Such a possibility could be inserted, as an alternative, in a CoE instrument on extradition.

2. Ne bis in idem

[10] Art 18, CoE Convention on the prevention of terrorism: "1 The Party in the territory of which the alleged offender is present shall, when it has jurisdiction in accordance with Article 14, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that Party. Those authorities shall take their decision in the same manner as in the case of any other offence of a serious nature under the law of that Party. 2 Whenever a Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that Party to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this Party and the Party seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1."

The differences between Art 9 ECE and Art 2 of its 2nd additional protocol, as well as with Art 3.2 of EAW were discussed. Difficulties in the translations of the Articles were pointed out ("offences" against "*faits*" in French). Reference was made, in this context, to the recent decisions by the European Court of justice. Further discussions are needed on this matter in order to identify possible long term solutions.

Additional issues:

- **The Group left the question of the type of normative developments (new Convention? Additional Protocol?) for a later stage, depending on the results of the discussion in the plenary and of the decisions in the CDPC.**
- **The CoE extradition mechanisms should be opended to non CoE member States, upon modalities to be further explored, in consultation with the CoE treaty Office.**
- **It is understood that individual rights envisaged in this document will be protected by national legislation and jurisdictions. Wouldn't these rights be better protected if they were inserted in a Protocol to the ECHR and submitted to the control of the ECtHR? Would they be better protected if the national judicial authorities in the requested State would play a more important role than the political/administrative authorities?**
- **The question of concurrent or multiple or conflicting requests should also be dealt with, notably in cases of requests by an international tribunal. Reference is made to Art 17 ECE and to Art 15 of the interamerican convention on extradition.**

As to other CoE Conventions:

- **Mutual assistance: the Group is of the opinion that it is too early to discuss the modernisation of a mechanism which has been recently updated by a 2nd additional Protocol (ratified by 12 States – only).**
- **Transfer of sentenced persons: the application of the Convention and of its Protocol is to be followed by the PC-OC, taking due consideration of the ECtHR case law. Developments could be envisaged as regards the transfer of mentally disordered persons.**
- **Transmission of criminal proceedings: the developments in the EU on this matter, with their links with the application of the rule on *ne bis in idem*, could lead to further developments.**

When discussing various elements in the extradition context, the Group might identify the need to update other conventions.

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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 includes 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 taylor 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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APPENDIX II

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http://www.coe.int/tcj/

Strasbourg, 04/10/2006 **PC-OC Mod (2006) OJ 2**

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)

1st meeting of the restricted Group of experts on international co-operation
1ère réunion du Groupe limité d'experts sur la coopération internationale
(PC-OC Mod)

Strasbourg, 21-22/09/2006 – Room /*Salle* 17

Draft Agenda
Projet d'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

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

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

4. Conclusion and closing of the meeting / *conclusion et clôture de la réunion*

APPENDIX III

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