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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

<u>Bureau</u> (CDPC-BU)

Strasbourg, 12-14 November 2008

CDPC-BU

12 - 14 November 2008

Summary Meeting Report

CDPC website: www.coe.int/cdpc CDPC courriel: dgi.cdpc@coe.int The following abbreviations are used in referring to the CDPC and its subordinate bodies as well as other Council of Europe Committees

- **CDPC** EUROPEAN COMMITTEE ON CRIME PROBLEMS
- CCJE CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
- CDAP CONFERENCE OF DIRECTORS OF PRISON ADMINISTRATIONS
- CDCJ EUROPEAN COMMITTEE ON LEGAL CO-OPERATION
- CDDH STEERING COMMITTEE FOR HUMAN RIGHTS
- CDEG STEERING COMMITTEE FOR EQUALITY BETWEEN WOMEN AND MEN
- **EG-TFV** COUNCIL OF EUROPE TASK FORCE TO COMBAT VIOLENCE AGAINST WOMEN, INCLUDING DOMESTIC VIOLENCE
- PACE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE
- PC-CP COUNCIL FOR PENOLOGICAL CO-OPERATION
- PC-OC COMMITTEE OF EXPERTS ON THE OPERATION OF EUROPEAN CONVENTIONS ON CO-OPERATION IN CRIMINAL MATTERS
- **PC-S-CP** GROUP OF SPECIALISTS ON COUNTERFEIT PHARMACEUTICAL PRODUCTS

EXECUTIVE SUMMARY

The Bureau of the CDPC decided to:

Council for Penelogical Co-operation (PC-CP)

- a. Draft Recommendation on guidelines to agencies providing probation and aftercare to offenders
- take note that the text of the draft Recommendation is still at an early stage of preparation;
- facilitate the discussion on the draft Recommendation by instructing the Secretariat and the Committee to ensure that member States are consulted on the draft Recommendation in good time prior to the finalisation of the text by the PC-CP, thus allowing for comments of member States to be taken into account by that Committee;
- instruct the Secretariat to bring to the attention of the Chair of the PC-CP the following comments made by individual members of the Bureau:
 - the scope of the definition of probation, proposed in the Part.I.A, appears to be too broad;
 - advice and assistance to victims, mentioned in the definition of probation, does not fit into the scope of the draft Recommendation and the treatment of offenders while in prison should not be foreseen in the draft Recommendation;
 - it would be possible to merge points 2 and 9 dealing with direction and accountability;
 - agencies providing probation and aftercare to offenders, foreseen in the above mentioned points, do not necessarily work under the instructions of the Ministry of Justice in all member States;
 - the need for informed consent, foreseen in point 5, is not essential in all cases at the presentencing stage
 - it is necessary to take into account the EU Policy Recommendations presented in Warsaw, 2007.

b. Recent and forthcoming work of the Council of Europe related to penitentiary issues including probation

- take note of the forthcoming European Conference of Directors of Probation Services, organised by the Council of Europe in co-operation with the Ministry of Justice of France and the European Organisation for Probation (CEP) to take place in Strasbourg on 27-28 November 2008;
- instruct the Secretariat to update the document "Current and future priorities and activities of the PC-CP" and improve its presentation;
- instruct the PC-CP to make suggestions for the next Bureau meeting as regards the prioritarisation of its future work;
- instruct the PC-CP that the subject of preventive detention (cf. paragraph 2 d of the above mentioned document), outside the framework of risks for security and safety in prison, does not fall within the PC-CP's competences;
- instruct the PC-CP to prepare concrete proposals for the monitoring of implementation of the European Prison Rules.

Council of Europe Conferences of the Ministers of Justice

- a. Follow-up of the 28th Conference (25-26 October 2007, Lanzarote, Spain)
- take note of the fact that the PC-OC started examining the question of the relationship between asylum procedures and extradition procedures and sent a questionnaire to all delegations of the PC-OC;
- take note of the oral information provided by the Secretariat on the outcome of the discussions which took place at the last PC-OC meeting;
 - instruct the Secretariat to keep the Bureau informed about the work of the PC-OC in this regard

and provide it with a summary of the replies to the questionnaire.

As regards the draft Specific Terms of Reference of the Group of Specialists on Child-friendly Justice (CJ-S-CH) to propose to the CDCJ:

- to include under paragraph 4 of the draft, a reference to Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice in order to indicate that in this area, work has already been done;
- to redraft paragraph 5.A, making it clear that each of the Steering Committees involved may nominate more expert candidates than the total number of expert appointees eventually allotted to it;
- instruct the Secretariat to invite member States to inform it about the appointment of suitable experts;
- instruct the Secretariat of the CDPC and the CDCJ to pursue their close co-ordination in order to prepare the list of expert candidates to be submitted to the Committee of Ministers.

b. Preparation of the 29th Conference (17-19 June 2009, Tromsø, Norway)

- take note of the information provided by Mr Chiaromonte, Secretary to the Conference, on the state of preparation of the Conference;
- welcome the idea of a "fireside chat" event on the eve of the Conference;
- instruct the Secretariat to clarify with the Norwegian authorities how the "fireside chat" should interlink with the contents of the Conference;
- instruct the Secretariat to prepare a short document (1-2 pages) in which the main issues and questions to be discussed during the Conference should be included and presented to the Ministers beforehand;
- that a resolution dealing with the issue of "dangerous offenders" should be prepared for submission to the Ministers;
- instruct the Secretariat to send a letter to all CDPC delegations informing them on the discussions within the Bureau on this issue and asking for possible proposals for further resolutions.

Pharmaceutical crime

- take note that the draft Convention is still at an early stage of its preparation;
- instruct the Secretariat to bring to the attention to the presidency of the PC-S-CP the following comments made by the members of the Bureau :
 - it recommends to the PC-S-CP to introduce a differentiation in the seriousness of the criminal offences proposed;
 - it recommends to the PC-S-CP not to present criminal liability as the only solution when including the principle of liability of legal persons into the draft Convention;
 - it expresses its concerns with regard to including diversion of medical products among the criminal offences;
- instruct the Secretariat, after consultation with the Chair of the PC-S-CP, to send the draft Convention to all member States and observer States, for possible comments, through their permanent representations as well as the members of the CDPC before the next meeting of the PC-S-CP.

Violence against women/domestic violence

- take note of the preliminary draft terms of reference of the Ad hoc Committee on preventing and combating violence against women and domestic violence as drawn up by the Secretariat (doc. GR-J(2008)12 revised of 27 October 2008);
- express its concern as to the feasibility of covering both domestic violence and the different areas of gender specific violence against women in a single instrument, bearing in mind the complexity of the issues involved, thus reiterating its opinion that more than one legal instrument may be needed to effectively cover all aspects related to violence against women/domestic violence;
- instruct the Chair of the CDPC to write a letter to the Chair of the GR-J informing him about the

views of the members of the Bureau and suggesting therefore to include in the preliminary draft Terms of Reference:

- an instruction to the future drafting Committee to present, within six months, an interim report on the state of play, in particular on the subjects and contents of the proposed instrument(s), including its working methods and a time table in order to allow the Committee of Ministers to make a decision, where necessary, on these proposals;
- an invitation addressed to member States to appoint at least two experts each, thereby ensuring that both legal and sociological expertise (experts from national authorities competent in particular for criminal justice and gender equality aspects) is adequately represented in the future drafting Committee.

Information provided by the Chair of the CDPC

- a. Article 23 of the Convention on the Transfer of Sentenced Persons (CETS No 112)
- b. 10th Anniversary of the European Judicial Network (Madeira, 13 October)
- take note of the information provided by Mr Boháčik, Chair of the CDPC, with regard to Article 23 of the Convention on the transfer of Sentenced Persons and the event celebrating the 10th anniversary of the European Judicial Network, which took place in Madeira, Portugal, on 13 October 2008.

Information provided by the Vice-Chair of the CDPC

c. The French Presidency of the EU – Main achievements in the penal law field

d. Conference on "Scientific proof in criminal justice" (Lyon, 15-16 October)

- take note of the information provided by Mr Ruelle, Vice-Chair of the CDPC, regarding the main achievements in the penal law field by the French Presidency of the EU and the conference on "Scientific proof in criminal justice, which took place in Lyon, France, on 15-16 October 2008;
- continue efforts to further improve co-ordination of the work of the Council of Europe and the EU in the field of penal law;
- discuss at its next meetings the possibilities of the Council of Europe to contribute to the development of standards and best practices as regards the gathering of forensic scientific evidence and its use in court, in particular from the point of view of the right to defence, and the right to equality of arms.

Information provided by the Secretariat

- e. Committee of Experts on the operation of European conventions on co-operation in criminal matters (PC-OC): simplified extradition
- welcome the fact that the PC-OC adopted a draft 3rd Additional Protocol to the European Convention on Extradition concerning simplified extradition;
- take note of the fact that the PC-OC is expected to finalise the draft explanatory report thereto at its next plenary meeting in May 2009 and instruct the Secretariat to keep the Bureau informed about developments concerning this explanatory report;
- recommend to the PC-OC to further clarify the normative value and implications of the obligation to extradite under the simplified procedure (Article 1) and of the possibility of making a reservation to Article 2, paragraph 1 of the Protocol;
- as regards compensation issues in extradition cases, instruct the Secretariat to prepare a document, to be discussed at the next Bureau meeting, reflecting the results of the stock-taking exercise of the PC-OC on this matter, as well as its discussions;
- instruct the Secretariat to keep the CDPC abreast of further developments concerning other issues relating to the modernisation of the European Convention on Extradition, which are on the agenda of the PC-OC (rule of speciality, lapse of time, ways and means of communication).

f. Implementation of the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse

- take note of the information provided by the Secretariat on the state of implementation of the programmes aimed at promoting the new Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse;
- take note in particular of the fact that two other conferences are already planned to take place : Warsaw (15-16 December 2008) and Toledo (March 2009).

Any other business

Start at its next meeting examining the situation of observers in the CDPC, including a re-examination of their position and the necessity to make an updated list of observers to the CDPC.

Dates of the next meeting

Convene the next meeting on 19-20 February 2009.

1. Opening of the meeting

The Bureau of the CDPC held its meeting in Strasbourg from 12 to 14 November 2008 with Mr Branislav BOHACIK (Slovakia) and Mr Eric RUELLE (France) in the Chair.

Mr Jorg POLAKIEWICZ, Head of the Law Reform Department of the Directorate for Standard Setting (Directorate General of Human Rights and Legal Affairs (DG-HL)), welcomed the members of the Bureau and presented the most recent developments in the Council of Europe's activities directly linked to the CDPC field of competence.

2. Adoption of the draft agenda

The agenda was adopted, as it appears in Appendix I to this report. Appendix II contains the list of participants.

3. Council for Penological Co-operation (PC-CP)

a. Draft Recommendation on guidelines to agencies providing probation and aftercare to offenders

The Bureau examined the draft Recommendation and took note that the text was still at an early stage of preparation. Individual members of the Bureau commented that the scope of the definition of probation appears to be too broad. Further, members of the Bureau found that the issue of assistance to victims does not fit into the scope of the draft Recommendation and the treatment of offenders while in prison should not be foreseen in the draft Recommendation.

The Bureau considered that it would be possible to merge points 2 and 9 of the Recommendation dealing with direction and accountability. It further commented that agencies providing probation and aftercare to offenders do not necessarily work under the instructions of the Ministry of Justice in all Member States. It also underlined that the need for informed consent, foreseen in point 5, is not essential in all cases at the pre-sentencing stage.

Finally, members of the Bureau held that it is necessary to take into account the EU Policy Recommendations presented in Warsaw, 2007.

The Bureau decided to instruct the Secretariat to bring these comments to the attention of the Chair of the PC-CP. Moreover, the Bureau instructed the Secreatiat and the PC-CP to ensure that Member States are consulted on the draft Recommendation in good time prior to the finalisation of the text by the PC-CP in order to allow for comments to be taken into account.

b.Recent and forthcoming work of the Council of Europe related to penitentiary issues including probation

The Bureau took note of the forthcoming European Conference of Directors of Probation Services, organised by the Council of Europe in co-operation with the Ministry of Justice of France and the European Organisation for Probation (CEP) to take place in Strasbourg on 27-28 November 2008. It also examined the current work plan and proposals for future activities made by the PC-CP. The Bureau instructed the Secretariat to update the document "Current and future priorities and activities of the PC-CP" and improve its presentation. Further, it instructed the PC-CP to make suggestions for the next Bureau meeting as regards the prioritarisation of its future work.

The Bureau instructed the PC-CP that the subject of preventive detention outside the framework of risks for security and safety in prison does not fall within the PC-CP's competences and requested

the Committee to prepare concrete proposals for the monitoring of implementation of the European Prison Rules.

4. Conferences of the Council of Europe Ministers of Justice

a. Follow-up of the 28th Conference (25 – 26 October 2007, Lanzarote, Spain)

The Bureau continued its examination of Resolution No. 1 on access to justice for migrants and asylum seekers adopted by the Ministers of Justice. It took note of the fact that the PC-OC decided to send a questionnaire to all delegations of the PC-OC on this issue. It further took note of the oral information provided by the Secretariat on the outcome of the discussions which took place at the last PC-OC meeting and instructed the Secretariat to keep the Bureau informed about the work of the PC-OC in this regard, as well as provide it with a summary of the replies to the questionnaire.

The Bureau also examined Resolution No. 2 on child-friendly justice adopted by the Ministers of Justice. Following a meeting with the Bureau of the European Committee on Legal Co-operation (CDCJ) concerning the draft Specific Terms of Reference of the Group of Specialists on Child-friendly Justice (CJ-S-CH), the Bureau decided to propose to the CDCJ to include under paragraph 4 of the draft, a reference to Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice in order to indicate that in this area, work has already been done and to redraft paragraph 5.A, making it clear that each of the Steering Committees involved may nominate more expert candidates than the total number of expert appointees eventually allotted to it. In this connection, the Bureau instructed the Secretariat to invite member States to inform it about the appointment of suitable experts.

The Bureau further instructed the Secretariat of the CDPC and the CDCJ to pursue their close coordination in order to prepare the list of expert candidates to be submitted to the Committee of Ministers.

b.Preparation of the 29th Conference (17 – 19 June 2009, Tromsø, Norway)

The Bureau took note of the information provided by Mr Chiaromonte, Secretary to the Conference, on the state of preparation of the Conference. It welcomed the idea of a "fireside chat" event on the eve of the Conference and instructed the Secretariat to clarify with the Norwegian authorities how the "fireside chat" should interlink with the contents of the Conference.

The Bureau further instructed the Secretariat to prepare a short document (1-2 pages) in which the main issues and questions to be discussed during the Conference should be included and presented to the Ministers beforehand.

As regards the subjects for the Conference, the Bureau decided that a resolution dealing with the issue of "dangerous offenders" should be prepared for submission to the Ministers. It finally instructed the Secretariat to send a letter to all CDPC delegations informing them on the discussions within the Bureau on this issue and asking for possible proposals for further resolutions.

5. Pharmaceutical crime

The Bureau took note of the oral information provided by the Secretariat on the state of play of the draft Convention on counterfeiting of medical products and similar crimes involving threats to public health.

As regards the content of the draft Convention, the Bureau decided to recommend to the PC-S-CP to introduce a differentiation in the seriousness of the criminal offences proposed and not to present criminal liability as the only solution when including the principle of liability of legal persons into the draft

Convention. Finally, the Bureau expressed its concerns with regard to including diversion of medical products among the criminal offences.

The Bureau instructed the Secretariat to bring these comments to the attention of the Chair of the PC-S-CP.

In order to further improve the transparency of the drafting process, the Bureau also instructed the Secretariat, after consultation with the Chair of the PC-S-CP, to send the draft Convention to all member States and observer States, for possible comments, as well as the members of the CDPC before the next meeting of the PC-S-CP.

6. Violence against women/Domestic violence

The Bureau took note of the information provided by the Secretariat concerning the joint meeting on 16 October of the two Rapporteur Groups of the Committee of Ministers (GR-J and GR-H). The subject of this joint meeting was to discuss the content of a future Council of Europe Convention on domestic violence/violence against women.

The Bureau then had an exchange of views on the basis of the information provided by the Secretariat.

The Bureau took note of the preliminary draft terms of reference of the Ad hoc Committee on preventing and combating violence against women and domestic violence as drawn up by the Secretariat (doc. GR-J(2008)12 revised of 27 October 2008), but expressed its concern as to the feasibility of covering both domestic violence and the different areas of gender specific violence against women in a single instrument, bearing in mind the complexity of the issues involved, thus reiterating its opinion that more than one legal instrument may be needed to effectively cover all aspects related to violence against women/domestic violence.

The Bureau then instructed the Chair of the CDPC to write a letter to the Chair of the GR-J informing him about the views of the members of the Bureau and suggesting therefore to include in the preliminary draft Terms of Reference:

- an instruction to the future drafting Committee to present, within six months, an interim report on the state of play, in particular on the subjects and contents of the proposed instrument(s), including its working methods and a time table in order to allow the Committee of Ministers to make a decision, where necessary, on these proposals;
- an invitation addressed to member States to appoint at least two experts each, thereby ensuring that both legal and sociological expertise (experts from national authorities competent in particular for criminal justice and gender equality aspects) is adequately represented in the future drafting Committee.

7. Information provided by the Chair of the CDPC

a. Article 23 of the Convention on the Transfer of Sentenced Persons (CETS No. 112)

The Bureau took note of the information provided by the Chair of the CDPC, Mr BOHACIK.

b. 10th anniversary of the European Judicial Network (Madeira, 13 October)

The Bureau took note of the information provided by the Chair of the CDPC, Mr BOHACIK.

8. Information provided by the Vice-Chair of the CDPC

a. The French Presidency of the EU – Main achievements in the penal law field

The Bureau took note of the information provided by Mr RUELLE, Vice-Chair of the CDPC, regarding the main achievements in the penal law field by the French Presidency of the EU.

b. Conference on "Scientific proof in criminal justice" (Lyon, 15 – 16 October)

The Bureau took note of the information provided by Mr RUELLE, Vice-Chair of the CDPC, on the conference on "Scientific proof in criminal justice". It decided to continue efforts to further improve co-ordination of the work of the Council of Europe and the EU in the field of penal law and to discuss at its next meetings the possibilities of the Council of Europe to contribute to the development of standards and best practices as regards the gathering of forensic scientific evidence and its use in court, in particular from the point of view of the right to defence, and the right to equality of arms.

9. Information provided by the Secretariat

a. Committee of Experts on the operation of European conventions on co-operation in criminal matters (PC-OC): simplified extradition

The Bureau took note of the information provided by the Secretariat with regard to the finalisation by the PC-OC of the draft 3rd Additional Protocol to the European Convention on Extradition concerning simplified extradition and welcomed its adoption by the PC-OC.

The Bureau also took note of the fact that the PC-OC is expected to finalise the draft explanatory report thereto at its next plenary meeting in May 2009 and instruct the Secretariat to keep the Bureau informed about developments concerning this explanatory report.

The Bureau recommended to the PC-OC to further clarify the normative value and implications of the obligation to extradite under the simplified procedure (Article 1) and of the possibility of making a reservation to Article 2, paragraph 1 of the Protocol.

As regards compensation issues in extradition cases, the Bureau instructed the Secretariat to prepare a document, to be discussed at the next Bureau meeting, reflecting the results of the stock-taking exercise of the PC-OC on this matter, as well as its discussions. It further instructed the Secretariat to keep the CDPC abreast of any developments concerning other issues relating to the modernisation of the European Convention on Extradition, which are on the agenda of the PC-OC, in particular as regards rule of speciality, lapse of time, ways and means of communication.

b. Implementation of the Council of Europe Conmvention on the protection of children against sexual exploitation and sexual abuse

The Bureau took note of the information provided by the Secretariat on the state of implementation of the programmes aimed at promoting the new Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse. In this context, the Bureau also took note of the fact that two other conferences are already planned to take place, namely Warsaw (15-16 December 2008) and Toledo (March 2009).

10. Any other business

The Bureau decided to start at its next meeting examining the situation of observers in the CDPC, including a re-examination of their position and the necessity to make an updated list of observers to the CDPC.

11. Dates of the next meeting

The Bureau agreed to hold its next meeting in Strasbourg on 19 – 20 February 2009.

APPENDIX I

<u>Agenda</u>

1.	Opening of the meeting	
2.	Adoption of the draft agenda Working documents Draft agenda Draft annotated agenda	CDPC-BU (2008) OJ 3 CDPC-BU (2008)
3. a.	Council for Penological Co-operation (PC-CP) Draft Recommendation on guidelines to agencies providing probation and aftercare to offenders <u>Working document</u> Draft Recommendation on guidelines to agencies providing probation and aftercare to offenders	PC-CP (2008) 09 rev
b.	Recent and forthcoming work of the Council of Europe related to penitentiary issues including probation <u>Working documents</u> Current and future priorities and activities of the PC-CP Preparation of the European Conference for Directors of probation services	PC-CP (2008) 04 rev
4. a.	Council of Europe Conferences of Ministers of Justice Follow-up to the 28 th Conference (25-26 October 2007, Lanzarote, Spain) Working documents Resolution No. 1 on access to justice for migrants and asylum seekers Resolution No. 2 on child-friendly justice Draft terms of reference of the "Group of experts on child-friendly justice"	Resolution No. 1 Resolution No. 2
b.	Preparation of the 29 th Conference (17-19 June 2009, Tromsø, Norway) <u>Working document</u> Draft resolutions related to CDPC activities	CDPC-BU (2008)
5.	Pharmaceutical crime Working documents Final Report Revised terms of reference of the PC-S-CP Terms of Reference of the Ad hoc Committee on counterfeiting of medical products and similar crimes involving threats to public health (PC-ISP) 4 th Summary meeting report of the PC-S-CP Preliminary draft Convention on the counterfeiting of medical products and similar crimes involving threats to public health	PC-S-CP (2008) fin PC-S-CP (2008) PC-ISP (2008) PC-S-CP (2008) PC-S-CP (2008)
6.	Violence against women / domestic violence <u>Working documents</u> Feasibility study for a Convention against domestic violence Opinion of the EG-TFV on the feasibility study Recommendation on the protection of women against violence Draft terms of reference	CDPC (2007) 09 rev EG-TFV (2008) 2 final Rec(2002)05 CDPC-BU (2008)

7. Information provided by the Chair of the CDPC

- a. Article 23 of the Convention on the Transfer of Sentenced Persons (CETS N°112)
- b. 10th Anniversary of the European Judicial Network (Madeira, 13 October)
- 8. Information provided by the Vice-Chair of the CDPC
- a. The French Presidency of the EU Main achievements in the penal law field
- b. Conference on "Scientific proof in criminal justice" (Lyon, 15-16 October)
- 9. Information provided by the Secretariat
- a. Committee of Experts on the operation of European conventions on co-operation in criminal matters (PC-OC): simplified extradition Working documents PC-OC-Mod Summary meeting report List of decisions taken at the 55th meeting of the PC-OC Draft 3rd Additional Protocol to the European Convention on Extradition

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- b. Implementation of the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse
- 10. Any other business
- 11. Dates of the next meeting

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APPENDIX II

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