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***RESTRICTED***

**Committee of Experts on Trafficking in Human Organs, Tissues and Cells**  
**(PC-TO)**

**Preliminary draft Council of Europe Convention against Trafficking in Human Organs**

Document prepared by the Secretariat of  
the Directorate General Human Rights and Rule of Law (DG1)

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## Preamble

The member States of the Council of Europe and the other signatories hereto:

[.....]

[Reference to the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (2000)” and the “Council of Europe Convention on Action against Trafficking in Human Beings (CETS No 197, 2005)”]

## Chapter I – Purpose [ use of terms]

### Article 1 – Purpose

1 The purposes of this Convention are:

a to prevent and combat the trafficking in human organs by providing for the criminalisation<sup>1</sup> of certain acts;

b to protect the rights of victims of the offences established under this Convention;

c to facilitate co-operation at national and international levels on action against the trafficking in human organs.

2 In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific follow-up mechanism.

### [Article 2 – Scope and use of terms

[1 This Convention applies to the illicit removal and trafficking in human organs for purposes of transplantation or other purposes.]<sup>2</sup>

2 For the purposes of this Convention, the term

[- “trafficking in human organs” shall mean any illicit activity in respect of human organs as prescribed in Articles .... (Article 4, paragraph 1, Article 5 and Articles 7 to 9 ) of this Convention;]<sup>3</sup>

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<sup>1</sup> Germany entered a reservation on the use of the term “criminalisation”.

<sup>2</sup> The Committee could not reach agreement on the wording of paragraph 1. A number of delegations have submitted proposals to replace the current wording, none of which, however, got the necessary support from a majority of delegations in the Committee. The Committee decided to revisit the paragraph at its next meeting in order to finalise it.

<sup>3</sup> The Committee could not reach agreement on the wording of this definition. A number of delegations expressed their support for the text proposed by the Chair (in track changes). Some delegations were in favour of extending the definition to also cover Article 9, while other delegations suggested that the term “trafficking” should only refer to the “core crimes” and thus not to Article 4, paragraph 2, and Article 6.

- “human organ” shall mean a differentiated part of the human body, formed by different tissues, that maintains its structure, vascularisation, and capacity to develop physiological functions with a significant level of autonomy. A part of an organ is also considered to be an organ if its function is to be used for the same purpose as the entire organ in the human body, maintaining the requirements of structure and vascularisation;

- “financial gain or other comparable advantage” shall for the purpose of this Convention not include compensation for loss of earnings and any other justifiable expenses caused by the removal or by the related medical examinations, or compensation in case of damage which is not inherent to the removal of organs .

### **Article 3 – Principle of non-discrimination**

The implementation of the provisions of this Convention by the Parties, in particular the enjoyment of measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, age, religion, political or any other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, state of health, disability or other status.

## **Chapter II – Substantive Criminal Law**

### **Article 4 – Illicit removal of human organs for transplantation<sup>4</sup> or other purposes<sup>5 6</sup>**

1. Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the removal of human organs from living or deceased donors<sup>7</sup>:

a where the removal is performed without the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorised under its domestic law<sup>8</sup>;

b where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage.<sup>9</sup>;

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<sup>4</sup> Four delegations requested that the term “transplantation” be replaced with the term “implantation”, while four other delegations opposed the proposed change in terms.

<sup>5</sup> 2 delegations wish to remove ‘other purposes’, while 1 delegation opposes this.

<sup>6</sup> The wording of Article 4, including in particular the question of whether paragraph 2 should refer to “offence” or “criminal offence”, is not yet agreed by the Committee. Some delegations hold, that the concept of “offence” waters down the political message of the draft Convention. If, on the other hand, the concept of “criminal offence” is agreed upon, other delegations would prefer to replace in paragraph 2 the wording “shall take the necessary...” with “shall consider taking the necessary...” in order to provide flexibility with regard to applying criminal or administrative procedures, measures and sanctions.

<sup>7</sup> The Committee was divided on whether the donor should – or even could - be criminalised under Article 4, paragraph 1. This question could possibly be considered for clarification in the explanatory report.

<sup>8</sup> Two delegations have requested to remove the phrase “in the case of the deceased donor” as they consider certain cases where an organ may be removed from a minor who is legally not able to consent. Other delegations were opposed to the removal of this phrase.

c where in exchange for the removal of organs from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage<sup>10</sup>.

2. Each Party shall consider taking the necessary legislative or other measures to establish as an a criminal offence<sup>11</sup> under its domestic law the removal of human organs from living or deceased donors where the removal is performed outside of the framework of its domestic transplantation system, or where the removal is performed in breach of essential principles of national transplantation rules or laws.<sup>1213</sup>

### **Article 5 – Use of illicitly removed organs for purposes of implantation or purposes other than for implantation<sup>14</sup>**

Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, the use of illicitly removed organs, as described in Article 4, paragraph 1, for purposes of implantation or other purposes than implantation.

### **Article 6 – Implantation of organs outside of the domestic transplantation system**

Each Party shall consider taking the necessary legislative or other measures to establish, where appropriate, as a criminal offence<sup>15</sup> under its domestic law, when committed intentionally, the implantation of human organs from living or deceased donors where the implantation is performed outside of the framework of its domestic transplantation system, or where the removal is performed in breach of essential principles of national transplantation rules or laws .

### **Article 7 – Illicit solicitation, recruitment, offering and requesting of undue advantages**

1 Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the solicitation and recruitment of an organ donor or a recipient, where carried out for financial gain or comparable advantage for the person soliciting or recruiting or for a third party.<sup>16</sup>

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<sup>9</sup> Previously, the provision contained a definition of “financial gain or comparable advantage”. This definition has been moved to Article 2.

<sup>10</sup> Previously, the provision contained a definition of “financial gain or comparable advantage”. This definition has been moved to Article 2

<sup>11</sup> Two delegations were in favour of entirely deleting Article 4, paragraph 2 and Article 6. Twelve delegations were in favour of using the term “offence” in Article 4, paragraph 2, whereas six delegations preferred the term “criminal offence”. The Committee could not reach a decision on Article 4, paragraph 2 and will revert to the question at its next meeting.

<sup>12</sup> One delegation requested that the wording “outside of the framework of its domestic transplantation system” be removed.

<sup>13</sup> Five delegations supported merging this paragraph with Article 6 as proposed by Germany. However four delegations were against such merging of the two provisions.

<sup>14</sup> Examples of what could constitute “other purposes” to be given in the explanatory report.

<sup>15</sup> The PC-TO has not yet taken a final decision as to whether reference should be made to a “criminal offence” or an “offence” (c.f. footnote 8)..

<sup>16</sup> Two delegations wished to add “or for the purposes of the illicit removal of organs” in order not to restrict the application of the provision only to situations where it can be demonstrated that solicitation or recruitment has been carried out for financial gain or comparable advantage.

2 Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to healthcare professionals, its public officials or persons who, in any capacity, direct or work for private sector entities,<sup>17</sup> with a view to having a<sup>18</sup> removal or implantation of a human organ performed or facilitated, where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1 or Article 5.

3 Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, the request or receipt by healthcare professionals, its public officials or persons who, in any capacity, direct or work for private sector entities,<sup>19</sup> of any undue advantage with a view to performing or facilitating the performance of a removal or implantation of a human organ, where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1 or Article 5.

### **Article 8 – Preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs**

Each Party shall take the necessary legislative and other measures to ensure that the following acts, when committed intentionally, are sanctioned either in accordance with Article 9 or<sup>20</sup> as a separate criminal offence<sup>21</sup>:

- a the preparation, preservation, and storage of illicitly removed human organs as described in Article 4, paragraph 1,<sup>22</sup> of this Convention;
- b the transportation, transfer, receipt, import and export of illicitly removed human organs<sup>23</sup> as described in Article 4, paragraph 1,<sup>24</sup> of this Convention;

### **Article 9 – Aiding or abetting and attempt**

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<sup>17</sup> This wording proposed by the Secretariat reflects the assumption that in cases covered by this provision the element of corruption will be prevalent. The wording is taken from Articles 2 and 7 of the Criminal Law Convention on Corruption (CETS No. 173).

<sup>18</sup> A number of delegations were in favour of deleting the word “illicit” in order that the provision may apply also to removal, implantation and transplantation inside of the domestic system for organ transplantation of a State Party.

<sup>19</sup> This wording proposed by the Secretariat reflects the assumption that in cases covered by this provision the element of corruption will be prevalent. The wording is taken from Articles 3 and 8 of the Criminal Law Convention on Corruption (CETS No. 173).

<sup>20</sup> Delegations have not agreed on whether or not to refer here to Article 9. Should such reference be deleted, the sentence may need to be reworded

<sup>21</sup> One delegation proposed that the term “offence” should be used so as to allow for the possibility to apply non-criminal sanctions.

<sup>22</sup> The question of whether reference should only be made to Article 4, paragraph 1, or in addition to Article 4, paragraph 2, will be revisited once the wording of Article 4 has been agreed. If the final text of Art 4 will differentiate in its paragraphs 1 and 2 between “criminal offences” and “offences”, and if accordingly the text of Art 9 refers only to Art 4 par 1, delegations will consider adding a separate paragraph 2 of Art 9 which refers to Art 4 par

<sup>23</sup> Three delegations proposed to add the wording “for financial gain or comparable advantage”.

<sup>24</sup> The question of whether reference should only be made to Article 4, paragraph 1, or in addition to Article 4, paragraph 2, will be revisited once the wording of Article 4 has been agreed.

1 Each Party shall take the necessary legislative and other measures to establish as criminal<sup>25</sup> offences when committed intentionally, aiding or abetting the commission of any of the criminal offences established in accordance with Article 4, paragraph 1, Article 5 and Articles 7 and 8 of this Convention.

2 Each Party shall take the necessary legislative and other measures to establish as a criminal<sup>26</sup> offence the intentional attempt to commit any of the criminal offences established in accordance with Article 4, paragraph 1, Article 5 and Articles 7 and 8 of this Convention.

[3 Each state or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply, or to apply only in specific cases or conditions, paragraph[s 1 and] 2 to offences established in accordance with Article .....]<sup>27</sup>

### **Article 10 – Corporate liability**

1 Each Party shall take the necessary legislative and other measures to ensure that legal persons can be held liable for offences established in accordance with this Convention, when committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within it based on:

- a a power of representation of the legal person;
- b an authority to take decisions on behalf of the legal person;
- c an authority to exercise control within the legal person.

2 Apart from the cases provided for in paragraph 1, each Party shall take the necessary legislative and other measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of an offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.

4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

### **Article 11 – Sanctions and measures**

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<sup>25</sup> Some delegations are in favour of removing square brackets, while others would agree only if the term “criminal” appears also in the second line. A possible alternative to be further discussed is to differentiate between cases where reference is made to “criminal offences” and those where a reference to “offences” would be appropriate. This issues is related to the eventual outcome of the discussion on terminology to be used in particular in Art 4 paragraph 2.

<sup>26</sup> Some delegations are in favour of removing square brackets, while others would agree only if the term “criminal” appears also in the second line (c.f. also footnote 20)

<sup>27</sup> One delegation would prefer to delete this paragraph, while others would need paragraph 3. Some delegations have suggested that paragraph 3 should also refer to paragraph 1, which could also help to solve the issue of terminology there (c.f. footnote 20).

1 Each Party shall take the necessary legislative and other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include, for offences established in accordance with Articles 4, paragraph 1, Article 5 and Articles 7 to 9,<sup>28</sup> when committed by natural persons, penalties involving deprivation of liberty that may give rise to extradition.

2 Each Party shall take the necessary legislative and other measures to ensure that legal persons held liable in accordance with Article 10 are subject to effective, proportionate and dissuasive sanctions, including criminal or non-criminal monetary sanctions, and may include other measures, such as:

- a temporary or permanent disqualification from exercising commercial activity;
- b placing under judicial supervision;
- c a judicial winding-up order.

3 Each Party shall take the necessary legislative and other measures to:

- a permit seizure and confiscation of proceeds of these offences, or property whose value corresponds to such proceeds;
- b enable the temporary or permanent closure of any establishment<sup>29</sup> used to carry out any<sup>30</sup> of the offences established in accordance with this Convention, without prejudice to the rights of bona fide third parties, and/or<sup>31</sup> to deny the perpetrator,<sup>32</sup> temporarily or permanently, the exercise of a professional activity relevant to the commission of any of the offences established in accordance with this Convention;<sup>33</sup>

## Article 12 – Aggravating circumstances<sup>34</sup>

Each Party shall take the necessary legislative and other measures to ensure that the following circumstances, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of domestic law, be taken into consideration as aggravating circumstances in determining the sanctions in relation to the offences established in accordance with this Convention:

- a the offence<sup>35</sup> caused the death of, or serious<sup>36</sup> damage to the physical [or mental]<sup>37</sup> health of, the victim<sup>38</sup>;

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<sup>28</sup>Final list of articles to be decided at a later date.

<sup>29</sup> Certain delegations were of the opinion that the provision should not apply to all establishments but only to those where medical treatments are performed

<sup>30</sup> One delegation questioned the use of the word “any”, and would like to see it replaced with a list of relevant offences.

<sup>31</sup> Some delegations were in favour of using ‘and/or’ while others would like to use only ‘or’

<sup>32</sup> Certain delegations were of the opinion that the provision should not apply to all perpetrators (but only to medical staff).

<sup>33</sup> Three delegations need to consider paragraph b further.

<sup>34</sup> Two delegations have entered a general reservation on this provision.

- b the offence was committed by persons abusing their position;
- c the offence was committed in the framework of a criminal organisation;
- d the perpetrator has previously been convicted of offences established in accordance with this Convention;
- e the offence was committed against a particularly vulnerable person<sup>39</sup>.

### **Article 13 – Previous convictions**

Each Party shall take the necessary legislative and other measures to provide for the possibility to take into account final sentences passed by another Party in relation to the offences established in accordance with this Convention when determining the sanctions.

## **Chapter III – Criminal Procedural Law**

### **Article 14 – Jurisdiction<sup>40</sup>**

1 Each Party shall take such legislative or other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:

- a in its territory; or
- b on board a ship flying the flag of that Party; or
- c on board an aircraft registered under the laws of that Party; or
- d by one of its nationals; or
- e by a person who has his or her habitual residence in its territory.

2 Each Party shall endeavour<sup>41</sup> to take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention where the offence is

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<sup>35</sup> A number of delegations would like to have a precise reference to relevant provisions describing the offences to be covered by Article 12 a.

<sup>36</sup> Some delegations preferred that the damage be qualified by using the terms “serious” or “undue”, since removal of organs always causes damage to the donor.

<sup>37</sup> A number of delegations proposed to delete the reference to “mental health”.

<sup>38</sup> The PC-TO will continue its examination of the question whether recipients of organs could, under certain circumstances, also be considered as victims.

<sup>39</sup> Certain delegations requested that a definition of particularly vulnerable persons be added to the text, others to the explanatory memorandum. Also one delegation proposed that this paragraph should specify that it refers to the donor only.

<sup>41</sup> Two delegations proposed to change the wording in paragraph 2, deleting the term “endeavour” and replacing it with the wording of paragraph 1. Seven delegations opposed and wished to leave the wording as it currently stands. Some delegations suggested changing the wording and having the possibility of entering of a reservation applying to Article 14, paragraph 1, letter “e”.

committed against one of its nationals or a person who has his or her habitual residence in its territory.

3 Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraph 1. [ d and ] e<sup>42</sup> [and paragraph 2] of this article.

4 For the prosecution of the offences established in accordance with Articles 4 to 9, of this Convention, each Party shall take the necessary legislative or other measures to ensure that its jurisdiction as regards paragraph 1.d [and e]<sup>43</sup> is not subordinated to the condition that the acts are criminalised at the place where they were performed.

5 Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right to limit the application of paragraph 4 of this article, with regard to offences established in accordance with Article 7, to cases where its national has his or her habitual residence in its territory.

6 For the prosecution of the offences established in accordance with Articles 4 to 9<sup>44</sup> of this Convention, each Party shall take the necessary legislative or other measures to ensure that its jurisdiction as regards paragraphs 1.d and e is not subordinated to the condition that the prosecution can only be initiated following a report from the victim or a denunciation from the State of the place where the offence was committed.

7 Each Party shall take the necessary legislative or other measures to establish jurisdiction over the offences established in accordance with this Convention, in cases where an alleged offender is present on its territory and it does not extradite him or her to another State, solely on the basis of his or her nationality<sup>45</sup>.

8 When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

9 Without prejudice to the general rules of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its internal law.

## **Article 15 – Initiation and continuation of proceedings<sup>46</sup>**

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<sup>42</sup> Certain delegations wished to include a reference to paragraph 1, letter “d” here, while other delegations wished to leave just the reference to letter “e” and in addition refer to paragraph 2.

<sup>43</sup> Some delegations were in favour of deleting reference to paragraph e here, while one delegation was opposed to this and requested deleting the “[ ]” around the reference to paragraph e. As an alternative to the deletion of the reference to letter “e”, it was suggested to extend paragraph 5 to all offences.

<sup>44</sup> Some delegations suggested that this paragraph should not apply to all articles of the Convention.

<sup>45</sup> Two delegations requested that the last part of this paragraph be deleted. Five delegations opposed this proposal.

Each Party shall take the necessary legislative and other measures to ensure that investigations or prosecution of offences established in accordance with this Convention should not be subordinate to a complaint and that the proceedings may continue even if the complaint is withdrawn.<sup>47</sup>

### **Article 16 – Criminal investigations**

Each Party shall take the necessary legislative and other measures, in conformity with the principles of its domestic law, to ensure effective criminal investigation and prosecution of offences established in accordance with this Convention<sup>48</sup>.

### **Article 17 – International co-operation in criminal matters<sup>49</sup>**

1 The Parties shall co-operate with each other, in accordance with the provisions of this Convention and in pursuance of relevant applicable international and regional instruments and arrangements agreed on the basis of uniform or reciprocal legislation and their domestic law, to the widest extent possible, for the purpose of investigations or proceedings concerning the offences established in accordance with this Convention, including seizure and confiscation.

2 The Parties shall co-operate to the widest extent possible in pursuance of the relevant applicable international, regional and bilateral treaties on extradition and mutual legal assistance in criminal matters concerning the offences established in accordance with this Convention.

3 If a Party that makes extradition or mutual legal assistance in criminal matters conditional on the existence of a treaty receives a request for extradition or legal assistance in criminal matters from a Party with which it has no such a treaty, it may, acting in full compliance with its obligations under international law and subject to the conditions provided for by the law of the requested Party, consider this Convention as the legal basis for extradition or mutual legal assistance in respect of the offences established in accordance with this Convention.

## **Chapter IV – Protection measures**

### **Article 18 – Protection of victims**

Each Party shall take the necessary legislative and other measures to protect the rights and interests of victims<sup>50</sup>, in particular by:

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<sup>47</sup> Russia made a proposal for an additional paragraph 1 to Article 15. However the proposal was not supported by other delegations.

<sup>48</sup> Examples of what is meant by specific investigative measures could be included in the explanatory report.

<sup>49</sup> This insertion was made at the request of some delegations suggesting to use the same phrase as in the Medicrime Convention. One delegation opposed the view that this provision as a consequence should not apply in case of investigations of offences where the draft convention refers to “offence” rather than “criminal offence”.

<sup>50</sup> After thorough discussion, delegations agreed not to include a definition of the term “victim”.

- a ensuring that victims have access to information relevant to their case and which is necessary for the protection of their health/rights<sup>51</sup>;
- b assisting victims in their physical, psychological and social recovery;
- c providing, in its domestic law, for the right of victims to compensation from the perpetrators.<sup>52</sup>

## Article 19 – Standing of victims in criminal proceedings

1 Each Party shall take the necessary legislative and other measures to protect the rights and interests of victims at all stages of criminal investigations and proceedings, in particular by:

a informing them of their rights and the services at their disposal and, unless they do not wish to receive such information, the follow-up given to their complaint, the possible charges, the general progress of the investigation or proceedings, and their role therein as well as the outcome of their cases;<sup>53</sup>

b enabling them, in a manner consistent with the procedural rules of domestic law, to be heard, to supply evidence and to choose the means of having / to have<sup>54</sup> their views, needs and concerns presented, directly or through an intermediary, and considered;<sup>55</sup>

c providing them with appropriate support services so that their rights and interests are duly presented and taken into account;

d providing effective measures for their safety, as well as that of their families [and witnesses on their behalf], from intimidation and retaliation.<sup>56</sup>

2 Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings.<sup>57</sup>

3 Each Party shall ensure that victims have access to legal aid, in accordance with domestic law and provided free of charge where warranted, when it is possible for them to have the status of parties to criminal proceedings.<sup>58</sup>

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<sup>51</sup> Some delegations preferred reference to the term “rights” or suggested to use both terms (i.e. “health and rights”).

<sup>52</sup> Some delegations proposed to delete the reference to “from the perpetrators” and simply say “seek compensation” without qualifying from whom.

<sup>53</sup> The German proposal for letter “a” was supported by some delegations. It reads: “a. informing them of their rights and the services at their disposal and, if they have expressed such a wish, the follow-up given to their complaint, the general progress of the investigation or proceedings, and their role therein;” One delegation opposed the proposal from Germany.

<sup>54</sup> Finish proposal. This proposal was supported by some delegations.

<sup>55</sup> Germany had made an alternative proposal, which however was not supported by other delegations.

<sup>56</sup> Germany had made an alternative proposal, which however was not supported by other delegations.

<sup>57</sup> Germany had made an alternative proposal, which however was not supported by other delegations

4 Each Party shall take the necessary legislative and other measures to ensure that victims of an offence established in accordance with this Convention committed in the territory of a Party other than the one where they reside can make a complaint before the competent authorities of their State of residence.

5 Each Party shall provide, by means of legislative or other measures, in accordance with the conditions provided for by its domestic law, the possibility for groups, foundations, associations or governmental or non-governmental organisations, to assist and/or support the victims with their consent during criminal proceedings concerning the offences established in accordance with this Convention.

#### **[Article 20 – Protection of witnesses**

1 Each Party shall, within its means and in accordance with the conditions provided for by its domestic law, provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings, who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2 Paragraph 1 of this article shall also apply to victims insofar as they are witnesses.]

### **Chapter V – Prevention measures**

#### **Article 21 – Measures at domestic level**

1 Each Party shall take the necessary legislative and other measures to ensure:

- i the existence of a transparent<sup>59</sup> domestic system for the transplantation of organs;
- ii equitable access to transplantation services for patients;
- iii adequate collection, analysis and exchange of information related to the offences covered by this Convention in co-operation between all relevant authorities.

2. With the aim of preventing and combatting<sup>60</sup> trafficking in organs, each Party shall take measures, as appropriate:

- i. to provide information or strengthen training for healthcare professionals and relevant officials<sup>61</sup> in the prevention of and combat against trafficking in organs;

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<sup>58</sup> The wording “in accordance with domestic law” was suggested by several delegations

<sup>59</sup> One delegation suggested that the term “transparent” should be deleted, as its meaning in this context was not clear.

<sup>60</sup> Two delegations requested that the term “prosecution” be added to the list of aims, whereas other delegations were against. Some delegations were in favour of referring only to “preventing”, others to “combating”.

<sup>61</sup> One delegation wanted of the term “relevant officials” to be specified by examples.

- ii. to promote awareness-raising campaigns addressed to the general public about the unlawfulness and dangers of trafficking in organs<sup>62</sup>.

[3. Each Party shall take the necessary legislative and other measures to prohibit and prevent the advertising of the need for, or availability of organs, with a view to offering or seeking financial gain or comparable advantage.<sup>63</sup>]

## **Article 22 – Measures at international level**

The Parties shall, to the widest extent possible, co-operate with each other in order to prevent trafficking in organs. In particular, the Parties shall:

- i report to the Committee of the Parties on its request on the number of cases of trafficking in organs detected [and prosecuted] within their respective jurisdictions;<sup>64</sup>
- [ii establish a network of single contact points for exchange of information pertaining to the prevention and detection of trafficking in organs.<sup>65</sup> ]<sup>66</sup>

## **Chapter VI – Follow-up mechanism**

### **Article 23 – Committee of the Parties**

1 The Committee of the Parties shall be composed of representatives of the Parties to the Convention.

2 The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention for the tenth signatory having ratified it. It shall subsequently meet whenever at least one third of the Parties or the Secretary General so requests.

3 The Committee of the Parties shall adopt its own rules of procedure.

4 The Committee of the Parties shall be assisted by the Secretariat of the Council of Europe in carrying out its functions.

5 A contracting Party which is not a member of the Council of Europe shall contribute to the financing of the Committee of the Parties in a manner to be decided by the Committee of Ministers upon consultation of that Party.

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<sup>62</sup> It was suggested to clarify that this is not intended to be an exhaustive list.

<sup>63</sup> Moldovan proposal taken from Article 21, paragraph 2, of the Additional Protocol to the Oviedo Convention. The PC-TO decided that this proposal should be subject to further discussion.

<sup>64</sup> Some delegations suggested that this is an example of a monitoring task, and that the provision should accordingly be moved to Article 25.

<sup>65</sup> One delegation prefers that the obligation contained in Article 23, ii, is limited to offences of a serious nature.

<sup>66</sup> Some delegations questioned the need for establishing such a network. The PC-TO decided that if “ii” is retained an alternative wording inspired by the text of the Medicrime Convention, as proposed by the Russian Federation, could be considered.

## **Article 24 – Other representatives**

1 The Parliamentary Assembly of the Council of Europe, the European Committee on Crime Problems (CDPC), as well as other relevant Council of Europe intergovernmental or scientific committees, shall each appoint a representative to the Committee of the Parties in order to contribute to a multisectoral and multidisciplinary approach.

2 The Committee of Ministers may invite other Council of Europe bodies to appoint a representative to the Committee of the Parties after consulting them.

3 Representatives of relevant international bodies may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.

4 Representatives of relevant official bodies of the Parties may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.

5 Representatives of civil society, and in particular non-governmental organisations, may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.

6 In the appointment of representatives under paragraphs 2 to 5, a balanced representation of the different sectors and disciplines shall be ensured.

7 Representatives appointed under paragraphs 1 to 5 above shall participate in meetings of the Committee of the Parties without the right to vote.

## **Article 25 – Functions of the Committee of the Parties**

1 The Committee of the Parties shall monitor the implementation of this Convention. The rules of procedure of the Committee of the Parties shall determine the procedure for evaluating the implementation of this Convention, using a multisectoral and multidisciplinary approach.

2 The Committee of the Parties shall also facilitate the collection, analysis and exchange of information, experience and good practice between States to improve their capacity to prevent and combat trafficking in organs. The Committee may avail itself of the expertise of relevant Council of Europe committees and other bodies.

3 Furthermore, the Committee of the Parties shall, where appropriate:

a facilitate the effective use and implementation of this Convention, including the identification of any problems and the effects of any declaration or reservation made under this Convention;

b express an opinion on any question concerning the application of this Convention and facilitate the exchange of information on significant legal, policy or technological developments;

c make specific recommendations to Parties concerning the implementation of this Convention.

4 The European Committee on Crime Problems (CDPC) shall be kept periodically informed regarding the activities mentioned in paragraphs 1, 2 and 3 of this article.

## **Chapter VII – Relationship with other international instruments**

### **Article 26 – Relationship with other international instruments**

1 This Convention shall not affect the rights and obligations arising from the provisions of other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention.

2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

## **Chapter VIII – Amendments to the Convention**

### **Article 27 - Amendments**

1 Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the Parties, the member States of the Council of Europe, non-member States having participated in the elaboration of this Convention or enjoying observer status with the Council of Europe, the European Union, and any State having been invited to sign this Convention.

2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC) and other relevant Council of Europe intergovernmental or [scientific committees]<sup>67</sup>, which shall submit to the Committee of the Parties their opinions on that proposed amendment.

3 The Committee of Ministers, having considered the proposed amendment and the opinion submitted by the Committee of the Parties, may adopt the amendment.

4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5 Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

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<sup>67</sup> The PC-TO could not decide whether to leave the reference to “scientific committees or not”. One delegation wished to retain this referencde, whereas two delegations wished to delete it.

## Chapter IX – Final clauses

### Article 28 – Signature and entry into force<sup>68</sup>

1 This Convention shall be open for signature by the member States of the Council of Europe, the European Union and the non-member States which have participated in its elaboration or enjoy observer status with the Council of Europe. It shall also be open for signature by any other non-member State of the Council of Europe upon invitation by the Committee of Ministers. The decision to invite a non-member State to sign the Convention shall be taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers. This decision shall be taken after having obtained the unanimous agreement of the other States/European Union having expressed their consent to be bound by this Convention.

2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five signatories, including at least three member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.

4 In respect of any State or the European Union, which subsequently expresses its consent to be bound by the Convention, it shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

### ALTERNATIVE TO ARTICLE 28:

#### [Article 28bis – Signature and entry into force

1 This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and the European Union.

2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 signatories, including at least eight member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 2.

4 In respect of any State referred to in paragraph 1 or the European Union, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of

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<sup>68</sup> Four delegations were in favour of Article 28. Two delegations were in favour of instead using Article 28 bis and ter. No delegation supported the Russian proposal. .

the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

#### **Article 28ter – Accession to the Convention**

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Parties entitled to sit on the Committee of Ministers.

2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.]

#### **Article 29 – Territorial application**

1 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.

2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 30 – Reservations**

1 No reservation may be made in respect of any provision of this Convention, with the exception of the reservations expressly established.

2 Each Party which has made a reservation may, at any time, withdraw it entirely or partially by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect from the date of the receipt of such notification by the Secretary General.

### **Article 31 – Dispute<sup>69</sup> settlement**

The Committee of the Parties will follow in close co-operation with the European Committee on Crime Problems (CDPC) and other relevant Council of Europe intergovernmental [or scientific committees] the application of this Convention and facilitate, when necessary, the friendly settlement of all difficulties related to its application.

### **Article 32 – Denunciation**

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

### **Article 33 – Notification**

The Secretary General of the Council of Europe shall notify the Parties, the member States of the Council of Europe, the non-member States having participated in the elaboration of this Convention or enjoying observer status with the Council of Europe, the European Union, and any State having been invited to sign this Convention in accordance with the provisions of Article 28, of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c any date of entry into force of this Convention in accordance with Article 28;
- d any amendment adopted in accordance with Article 27 and the date on which such an amendment enters into force;
- e any reservation made under Article 14, paragraph 5, any withdrawal of a reservation made in accordance with Article 30;
- f any denunciation made in pursuance of the provisions of Article 32;
- g any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done in [.....], this [..] day of [.....], in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention or enjoy observer status with the Council of Europe, to the European Union and to any State invited to sign this Convention.

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<sup>69</sup> The PC-TO decided to replace the the term “friendly settlement” with “dispute settlement”, which was considered to be a more precise description of the content of the provision.