

COUNCIL OF EUROPE



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# COMMITTEE OF EXPERTS ON TERRORISM (CODEXTER)

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## INFORMATION DOCUMENT : WORK ON SPECIAL INVESTIGATION TECHNIQUES

### 29<sup>th</sup> Plenary Meeting

Strasbourg (France), 16-18 November 2015

Council of Europe  
Agora, Room G01

Opening at 9:30, Monday  
Closing at 18:00, Wednesday

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## **1. Introduction**

On the basis of its Terms of Reference for 2014 – 2015, CODEXTER, at its 25<sup>th</sup> Plenary Meeting examined and discussed a document containing proposals for priority areas for its work in 2014-2015.

These proposals included, among other things, establishing four Sub-Groups of the Committee focusing on four separate priorities, namely: special investigation techniques; radicalisation and the receiving of training for terrorism, including via the Internet; terrorists acting alone; and the assessment of possible gaps in the legal framework provided by the Council of Europe international legal instruments in the area of the prevention and suppression of terrorism.

The Sub-Group on special investigation techniques prepared and examined a Discussion Paper on this topic to form the basis for the discussions of CODEXTER at the occasion of the 26<sup>th</sup> Plenary Meeting of the Committee.

It agreed that certain amendments to CoE Recommendation Rec(2005)10 on the use of “special investigation techniques” in relation to serious crimes including acts of terrorism are necessary, in particular as regards balancing the existing text by, on the one hand, further emphasising the need to adhere to human rights in the application of special investigation techniques, and, on the other hand, addressing the new technical capabilities developed since 2005 and the inclusion of financial investigation techniques among the special investigation techniques covered by the Recommendation.

Although CODEXTER had agreed to start with the topic of “special investigation techniques” (SIT) as from the end of 2014 and throughout 2015, the Committee had to postpone its foreseen activities following the request of the CoE Secretary General, at the 27<sup>th</sup> plenary meeting of the CODEXTER (November 2014) to play a key role in ensuring the proper and timely implementation of the United Nations (UN) Resolution 2178 (2014) on “Threats to international peace and security caused by terrorist acts”. The Committee was encouraged, notably, to adopt the draft terms of reference for an ad hoc committee to elaborate and negotiate a draft additional protocol to the Council of Europe Convention on the Prevention of Terrorism. On 22 January 2015, the Committee of Ministers (CM), at the proposal of the CODEXTER, adopted the terms of reference for the Committee on Foreign Terrorist Fighters and Related Issues (COD-CTE) which drafted the Protocol in a timely fashion. It was adopted by the CM in April 2015 and opened for signature in Riga on 22 October 2015.

With the positive outcome of the work of CODEXTER on the Additional Protocol during this busy and important year, it is now important to look back at decisions made with respect to activities on special investigation techniques and to envisage concrete next steps as from the end of 2015 and throughout 2016 to amend Recommendation (2005)10 within a specific drafting group for this purpose.

## **2. Background information on the establishment of a drafting group**

At its the 26th Plenary Meeting (6-7 May 2014) , CODEXTER decided to establish a drafting group, composed of members of CODEXTER, the European Committee on Crime Problems (CDPC), the Steering Committee on Media and Information Society (CDMSI), the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the Cybercrime Convention Committee (T-CY) and the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD), with the task of elaborating a set of draft amendments to Recommendation Rec(2005)10.

At its 5<sup>th</sup> meeting of its Bureau (15 September 2014), CODEXTER decided to instruct the Secretariat to invite 13 members to participate in the drafting group. Of these, 7 members (including the Chair of the drafting group) should be appointed by CODEXTER, 2 by CDPC and the other Committees should appoint 1 member each. It further instructed the Secretariat to foresee at least 2 meetings with the future drafting group.

At its 27<sup>th</sup> Plenary meeting (13-14 November 2014), CODEXTER confirmed the decision of the Bureau to appoint Mr Nicola PIACENTE (Italy) as Chair of the drafting group. Prior to this meeting, a letter was sent to members of the CODEXTER calling for candidates with practical experience concerning the application of special investigation techniques for the six remaining seats reserved for CODEXTER in the drafting group.

The plenary CODEXTER decided to appoint as representatives of the drafting group:

- Mr Antonios PAPAMATTHAIOU (Greece),
- Mr Dermot WOODS (Ireland),
- Ms Lucia LING KET ON (the Netherlands),
- Ms Ileana VISOIU (Romania),
- and a swiss expert to be identified.

One place still needs to be filled by CODEXTER.

To represent the CDPC, Mr Edin JAHIC (Bosnia and Herzegovina) and Mr Tihomir KRALJ (Croatia) were nominated for this task.

Concerning other committees mentioned above, these were informed of the foreseen activities but representatives had not been yet elected.

### **3. Next steps for 2015-2016**

The composition of the drafting group will be reviewed and finally established by the end of 2015. In November 2015, appointed members from CODEXTER and CDPC will be requested to confirm their wish and availability to remain as members of the Group. With respect to remaining seats, members with relevant expertise and experience will be called upon to join the Group.

It is important to underline that the CDMSI, MONEYVAL, T-CY and T-PD will have an instrumental role to play via their representatives to ensure in particular that the specifics of special investigative techniques in the context of the increased use of new information and communication technologies, cases of money laundering and the need for financial investigation as well the question of the protection of privacy are included in the updated version of the Recommendation in the most relevant manner. The set of draft amendments to the Recommendation Rec(2005)10 will be finalised by the Plenaries of CODEXTER and CDPC in view of the final adoption by the Committee of Ministers by the end of 2016.

Two meetings (2-3 days each) of the drafting group may be envisaged at the beginning of 2016 (possibly on the first week of February) and before the summer break (May/June). In accordance with available resources, a possible third meeting could, if necessary, take place towards the end of the year (September/October).

External observers from other international organisations working in this area in particular from the UN and the EU as well as academic experts may be invited to join meetings, where relevant, to support the drafting of amendments made to the Recommendation.

For the substantive preparation of the first meeting of the drafting group, in full cooperation with the Chair of the drafting group and of CODEXTER, suggestions for amendments to the Recommendations will be drafted on the basis of the aforesaid Discussion Paper, and presented for discussion at the first meeting.

Any other suggestion for action or working method may be put forward by members of CODEXTER at this meeting.