

**Information Document
SG/Inf(2011)2 FINAL**

17 February 2011

OUTLINE OF CONVENTION REVIEW

1. Background

The priorities for 2011 included¹, inter alia, the proposal to review the relevance of Council of Europe's (hereafter, "CoE") Conventions. CoE Conventions "*constitute a unique integrated system collectively defined and agreed upon by member states*" and "*a key strength and comparative advantage of the organisation*". Therefore, it was proposed "*to take stock of the situation by conducting a critical review of their relevance*" in the understanding that this would provide "*the basis for decisions on follow-up including measures to increase the visibility and the number of parties to relevant conventions.*"

At the 1084th meeting² of the Deputies, the Committee of Ministers "*welcomed the strategic approach of the Secretary General to the prioritisation of the Programme of Activities and Budget and supported his proposals for Priorities for 2011*".

During subsequent budgetary discussions it was clarified that the exercise on Convention review was to be conducted without additional budgetary resources. This was confirmed when the Committee of Ministers adopted the budget for 2011³.

Between September and December 2010 the issue as to how to proceed to implement this priority proposal on Convention review was discussed internally by the Secretariat, within the framework of several structures, such as the Task Force on Convention Review, the Change Workshop on Programme, Budget and Priorities and the Agenda 2020 Group.

2. Main Objectives of Convention review

The main objectives of this exercise are the following:

- i) Identify a set of Key Conventions, applicable throughout the European continent, with a view to creating a common legal platform applicable in all member states in the areas of Human Rights, Rule of Law and Democracy;
- ii) Identify obsolete Conventions, Conventions no longer in force or applied, with a view to cleaning up the list of CoE Conventions and saving, if possible, unnecessary expenditure;

¹ document CM (2010) 42 rev

² 1084th Meeting , 5 May 2010, item 1.8

³ 1099th Meeting , 23 November 2010

- iii) Identify those Conventions in need of modernisation (revision/updating) to maintain or to increase their relevance in the next decade;
- iv) Identify ways of promoting the accession to relevant Conventions by non member states, enhancing CoE's leadership in its priority areas of action;
- v) Identify ways of facilitate EU accession to existing and future CoE Conventions, in order to avoid, to the extent possible, duplication or double standards in the areas of Human Rights, Rule of Law and Democracy;
- vi) Identify measures which could be adopted by the Committee of Ministers and/ or by the Contracting Parties in order to increase the visibility and the number of Contracting Parties to the (key) CoE Conventions, achieving the objectives set out in i) to v) above.

3. Main proposal

The Secretary General proposes the elaboration of a **Comprehensive Report for the attention of the Committee of Ministers by the end of September 2011**. The draft Outline of such a report is reproduced as Appendix to this document. Its basic elements would be the following:

- a) The identification of a set of criteria for reviewing the relevance of CoE Conventions;
- b) the application of those criteria to the existing list of CoE Conventions;
- c) a classification of CoE Conventions in several groups (see below) in the light of the agreed criteria, as well as by subject matter;
- d) A proposal of a Convention Action Plan, which would include:
 - i. measures which could be adopted in respect of each group of Conventions ;
 - ii. measures which could facilitate EU accession to relevant (key) CoE Conventions;
 - iii. measures to facilitate accession of non-member states to relevant (key) Conventions.

4. Identification of criteria

The application of the criteria to be followed for assessing the relevance of CoE Conventions would lead to a classification into 5 categories: key conventions (Group 1), active conventions (Group 2), conventions to be updated, revised or grouped together in order to increase their efficiency or restore their priority or active status (Group 3), inactive conventions (Group 4) and conventions no longer open to State participation (Group 5). The criteria would be the following:

4.1 In order to be included in Group 1 (key conventions):

- Ratification by more than 40 member states, or even all member states, or
- Ratification by a significant number of non-member states, or
- Inclusion in PACE opinions on accession of states to the CoE, or
- Identification as core Conventions in Appendix to PACE Resolution 1732 (2010).

4.2 In order to be included in Group 2 (active conventions):

- Recent opening for signature (less than 10 years ago), or
- New ratifications regularly, or
- Existence of monitoring activities (or standard-setting activities and/or co-operation activities) based on the convention, or
- Influence beyond Europe: demands for accession from non-member states and/or use as a model for legislative reforms, or
- Effective implementation (criterion often difficult to evaluate, but important for conventions providing, for example, for exchanges of information, notifications or transfers of data or persons), or
- added value, particularly where no other international instrument deals with the subject covered, or
- Replacement of many bilateral agreements.

4.3 In order to be included in Group 3 (conventions to be updated, revised or grouped together in order to increase their efficiency, restore their priority or active status):

- Efficiency gains from modernisation, or
- Slowing down of rate of ratification in recent years, or
- Inappropriateness for legislative, societal, technical and other changes and developments, or
- Technical complexity hindering ratification.

4.4 In order to be included in Group 4 (inactive conventions):

- No entry into force 20 years after opening for signature, or
- Ratification by fewer than 10 States 20 years after their opening for signature, or;
- Lack of new ratifications for many years, or
- Denunciation by the Parties, or
- When Convention has been superseded by more recent conventions, including revised conventions, or
- Existence of new EU legislation or instruments adopted by other international organisations introducing higher standards replacing or updating those of the CoE Convention.

4.5 In order to be included in Group 5 (conventions no longer open to State participation):

- Protocols of amendment entered into force and incorporated, therefore, in the mother CoE Convention, or
- Protocols having fulfilled their aims and lost their *raison d'être*.

5. Categories of Conventions with examples

5.1 Key Conventions. Content and Examples

This category is made up of the core CoE Conventions, which help shape the ideals and principles shared by all CoE member states. Participation in these conventions forms the basis of CoE. This category also includes the most ratified conventions. Wherever feasible, increasing their efficiency and visibility should be considered. Examples would be: *the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS 126)* or the *Criminal Law Convention on Corruption (ETS 173)* or the *European Convention on Extradition (ETS No. 24)*.

5.2 Active Conventions. Content and examples

These conventions are those which remain fully relevant to the Organisation. They have a good level of ratification, which regularly increases. They function properly and do not seem to require revision. Consideration might nonetheless be given to possibilities of raising their profile and visibility as well as the number of ratifications. Examples would be: The *Agreement on the Transfer of Corpses* (ETS 80, criteria met: replaces bilateral agreements, ratifications at regular intervals), *Council of Europe Convention on the Prevention of Terrorism (ETS No. 196)*, criteria met: recent opening for signature, new ratifications regularly, existing monitoring activities) and the *European Landscape Convention* (ETS 176, criterion met: to date the only international treaty in this field).

5.3 Conventions to be updated, revised or grouped together in order to increase their efficiency or restore their priority or active status

Some conventions may require modernisation through an update or an overhaul. Some CoE conventions have already undergone this process, either via protocols of amendment or by adopting a new convention. In its Recommendation 1920 (2010), "Reinforcing the effectiveness of Council of Europe treaty law", PACE invited the Committee of Ministers to instruct the competent steering committees to study the treaties within their respective areas of authority to identify those conventions which were still relevant, but required updating. The European Committee on Crime Problems (CDPC) has accordingly suggested revising certain conventions in the criminal field⁴.

The tasks of identifying which conventions should be updated and deciding on the expediency of conducting such updating, lies with the Committee of Ministers, with the assistance of relevant Steering Committee. However, the Secretary General's future comprehensive report would contain suggestions to that effect. Examples would be: The *European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)*, the *European Convention on Mutual assistance in Criminal Matters (ETS No. 30)* and the *European Convention on the Compensation of Victims of Violent Crimes (ETS 116)*.

5.4 Inactive Conventions

This category would cover old conventions which States no longer ratify, which the States Parties no longer implement, or whose content is now obsolete or falls totally outside the basic priorities and activities of the organisation. Examples would be: the *Convention on the Liability of Hotel-keepers concerning the Property of their Guests (ETS 41)* and the *European Convention on Establishment of Companies (ETS 57)*.

5.5 Conventions no longer open to State participation

This category would comprise CoE Conventions which no longer produce any legal effects or which are no longer open to State participation. Examples would be: the *Additional Protocol to the European Agreement on the Exchange of Tissue-Typing Reagents (ETS 89)* and the *Protocol No.14bis (ETS 204) to the Convention for the protection of Human Rights and Fundamental Freedoms*.

If a Convention meets the relevant criteria, it may be included in more than one of the above categories (particularly regarding group 3).

⁴ Opinion of the CDPC on Recommendation 1920(2010), adopted in October 2010.

6. Measures to be included in the Action Plan on CoE Conventions

A Convention Action Plan could include some or all the following proposals, in relation to one or several of the categories of CoE Conventions outlined above:

- Organisation of Treaty Events to promote ratification of certain treaties (particularly Key Conventions);
- Including systematically the issue of possible ratification of certain CoE Conventions (particularly Key Conventions) on the occasion of Secretary General's political dialogue with High Authorities of member states;
- Promoting the ratification of certain CoE Conventions in the framework of CoE Campaigns;
- Inviting certain non-member states to consider acceding to certain CoE Conventions (particularly Key Conventions);
- Giving terms of reference and allocating necessary resources to Steering or Ad hoc Committees to modernise (review/update) certain Conventions (in particular those included in Group 3);
- Adopting a CM Resolution declaring that certain CoE Conventions are to be considered as obsolete, discouraging further rustications or accessions;
- Adopting a CM Resolution, suspending the effects of certain CoE Conventions;
- Adopting a CM Resolution inviting the Parties to proceed to the denunciation of certain CoE Conventions (those included in Group 4)
- Publishing in the Treaty Office's website a list of obsolete Conventions and/or of Conventions not longer in force;
- Adapting the Final Clauses of CoE Conventions to facilitate EU accession;
- Adapting the Final Clauses of CoE Conventions to facilitate non-member states' accession, building on existing practices;
- Preparing protocols to relevant CoE Conventions, when necessary, opening them to the EU accession;
- Preparing protocols to relevant CoE Conventions, when necessary, opening them non member states accession;
- To pursue the dialogue with the EU Commission to identify possible obstacles preventing ratification and draw up a list of CoE Conventions of potential interest for EU accession.

7. Consultations

According to Public International Law, Conventions, including those concluded within the CoE framework, are owned by the Contracting Parties to them. The Secretary General's Comprehensive report on Convention review will need, therefore, to be the object of consultations with member states/Contracting Parties. It is therefore proposed to obtain the views about its content (in all or in part) with:

- The Committee of Legal Advisers on Public International Law, probably in its (early) September 2011 Session;
- Relevant Steering Committees on thematic CoE Conventions, and their relevant subordinate bodies;
- National authorities, via Permanent Representations. This consultation could take place after the end of September 2011 on the basis of the Report submitted by the Secretary General in September 2011. In the light of comments made by delegations, the Secretary General may issue a revised version of this Report.

8. Proposed tentative schedule

- Preparation of Comprehensive Report (including Action Plan on Conventions): mid-February- mid-September 2011;
- Distribution of draft Comprehensive Report to the Committee of Ministers: by the end of September 2011;
- Preliminary exchange of views: October 2011;
- Decision on Convention Review proposals and on Action Plan on Conventions: by mid November 2011.

APPENDIX

PRELIMINARY OUTLINE OF THE SECRETARY GENERAL'S COMPREHENSIVE REPORT ON COUNCIL OF EUROPE CONVENTIONS

1. Introduction

- Context: a Secretary General Priority for 2011
- Purpose of the report
- Sources used
- Methodology
- Consultations with member states, relevant Committees.

2. Criteria for evaluating the CoE Conventions:

- Objective evaluation criteria
- Criteria leading to establishment of categories
- Adding a "political priority" criterion (?)
- Consultation with member states/CAHDI => possible amendments?
- List of evaluation criteria to be used in the report

3. Application of criteria of evaluation to existing CoE Conventions

Establishment of 5 categories of CoE Conventions with regard to their relevance in 2010

- Category No. 1: Key Conventions
- Category No. 2: Active Conventions
- Category No. 3: Conventions in need of updating/reviewing/merging
- Category No. 4: Inactive Conventions
- Category No. 5: Conventions no longer open to State participation.

4. Consultation of relevant Committees + consultation with member states;

5. Should the SG/CM retain a margin of discretion to propose/ include a Convention in Category 1 in the light of political priorities?

Moreover, there will be a need to retain a certain margin of flexibility even in the application of objective criteria during the elaboration and adoption of then draft report.

6. An Action Plan for CoE Conventions: Organisation of measures by categories of Convention

- Key Conventions => measures to ensure that all CoE member states become Parties to them and duly implement them/promotion beyond Europe; modernisation to improve their efficiency; measures to increase their visibility and, where applicable, encouragement of accession of non member states. Towards a pan-European legal space;
- Active Conventions => Follow-up their progress; encouragement of ratification/accession;
- Conventions to be updated/ reviewed/ merged => Give terms of reference and necessary resources to Steering or Ad hoc Committees to examine the possibility of updating, reviewing or merging some CoE Conventions so as to reinforce their effectiveness;
- Inactive Conventions => analysis of several possibilities: a) denunciation; b) suspension; c) CM Resolution declaring them inactive and not proposed for signature in spite of being in force;
- Conventions no longer open to State participation => Publish list in Treaty Office's website.

7. Consultations needed:

- a) With relevant Committees;
- b) With CAHDI;
- c) With national authorities.

8. A certain degree of flexibility will be necessary as the Secretary General might find, during the elaboration of the report and consultations on it that additional issues ought to be taken into consideration

9. Conclusions: proposals for CM decisions.