

Strasbourg, 28 October 2014

REVIEW OF THE CoE CONVENTIONS BY OTHER CoE BODIES

**LETTER BY THE CHAIR OF THE CDPC TO THE CHAIRPERSONS OF THE RELEVANT CoE
MONITORING/CONVENTIONAL BODIES**

AND

**THE REPLIES/CONTRIBUTIONS RECEIVED BY THE RELEVANT COE MONITORING/CONVENTIONAL
BODIES RESPONSIBLE FOR THE ASSESSMENT/IMPLEMENTATION OF CoE CONVENTIONS IN
CRIMINAL LAW MATTERS**

**LETTER BY THE CHAIR OF THE CDPC TO THE CHAIRPERSONS OF THE RELEVANT CoE
MONITORING/CONVENTIONAL BODIES**



Mr Markko Künnapu
Chairman of the T-CY
Adviser
Ministry of Justice
Tonismagi 5A
EST-15191 Tallinn

E-mail: markko.kynnapu@just.ee

Strasbourg, 25 March 2014


Dear Mr Künnapu,

I refer to the decision of the Committee of Ministers of the Council of Europe of 10 April 2013 on the "Review of Council of Europe conventions – Report by the Secretary General" and in particular to its paragraph 9 where the Deputies "instructed the steering and ad hoc committees to carry out, (...) an examination of some or all of the conventions for which they have been given responsibility, in co-operation, where appropriate, with the relevant convention-based bodies, (...)".

With a view to properly implementing this decision the CDPC decided at its last Plenary to draft a letter to the chairpersons of the relevant CoE monitoring/conventional bodies (PC-OC, GRECO, Group of Parties Lanzarote, GRETA, T-CY, MONEYVAL) asking them whether or not each committee is ready, and if so when, to provide concise and written feedback to the CDPC on the implementation/assessment with regard to the conventions for which they are responsible.

I would be grateful if you could inform me, at this stage, when you would be in a position to provide an answer to this CDPC's request related to the convention(s) for which you are responsible.

Best regards,



Jesper Hjørttenberg
Chair of the CDPC

REPLIES/CONTRIBUTIONS RECEIVED BY THE RELEVANT CoE MONITORING/CONVENTIONAL BODIES
RESPONSIBLE FOR THE ASSESSMENT/IMPLEMENTATION OF
CoE CONVENTIONS IN CRIMINAL LAW MATTERS

SECRETARIAT GENERAL

DIRECTORATE GENERAL
HUMAN RIGHTS AND RULE OF LAW

*INFORMATION SOCIETY AND ACTION AGAINST CRIME
DIRECTORATE*

C198-COP

Please quote: DGI/JR/dw

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Mr Jesper Hjortenberg
Chairman of the European Committee
on Crime Problems (CDPC)
Directorate General
Human Rights and Rule of Law
Council of Europe

Strasbourg, 10 April 2014

Dear Mr Hjortenberg,

Thank you for letter of 27 March advising me of the decision of the Committee of Ministers in April 2013, instructing steering and ad hoc committees to carry out an examination of some or all of the conventions for which they are responsible, in co-operation with the relevant convention based bodies.

I would like to provide some initial observations. As you know, the Council of Europe has been a leading standard setter in this area for over 30 years. CETS 198 was preceded by the landmark 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141 – the Strasbourg Convention) which is ratified by all Council of Europe member States (plus Australia), and also by Recommendation R(80)10, adopted by the Committee of Ministers in June 1980.

CETS 198 was opened for signature in 2008. The pace of ratifications has been slow but is steadily improving. So far we have 24 ratifications and 13 signatures not followed by ratification (including the European Union). We know work is in progress at this time in several States to complete the ratification process. In time we expect all Council of Europe member States and the European Union to ratify CETS 198. Some non-Member States have shown interest in joining it as well.

We have already decided to use the so-called "fast track" procedure, provided for in Article 54(6) of the Convention to update the categories of predicate offence contained in the appendix. This will bring this aspect of the Convention fully into line with the 2012 revised Financial Action Task Force (FATF) standards. We also are committed to keeping all its other provisions under review, in order to recommend opening negotiations of a protocol to this treaty at an appropriate time, given that CETS 198 was prepared over 10 years ago.

.../2

However, as we consider that there is much in this treaty which can help achieve better results by prosecutors and law enforcement in this area, we are reluctant to consider a major revision of it until there is a bigger "critical mass" of ratifying States. Accordingly we are not inclined to delay further ratifications unnecessarily by recommending the commencement of a general amendment process at this time. None-the-less, we have agreed to keep this issue under review at each meeting of the Conference of the Parties.

I can advise you that your letter will be on the agenda of our next meeting (25 - 27 June). At the conclusion of that meeting we should have adopted an additional 3 reports, bringing the total of adopted reports under the Convention's monitoring process to 7. Additionally we may have by then more information from other sources on implementation issues. We therefore should be in a position to provide a preliminary assessment of implementation once we have taken stock of the overall results. I expect we may be able to provide this in the autumn, if this is acceptable.

For the record, the Strasbourg Convention (ETS 141) is not evaluated by the Conference of the Parties, as ETS 141 has no monitoring mechanism attached to it. The standards in the Strasbourg Convention are now largely incorporated in the FATF's global standards, which are evaluated by FATF and MONEYVAL. While ETS 141 is not strictly within my remit, as one of the drafters of CETS 198 (which builds on ETS 141) I can advise that practitioners in this area have always envisaged that ETS 141 would remain in force. It should operate alongside CETS 198 (particularly for international cooperation purposes) for those States which are not in a position to fully implement all of the more modern treaty provisions in CETS 198.

I will write to you further when we have discussed these issues at the next COP.

Yours sincerely,



Eva Rossidou-Papakyriacou

President of the Conference of the Parties

Markko Künnapu
Chair of the Cybercrime Convention Committee (T-CY)
Council of Europe
F-67075 Strasbourg, France
Email: markko.kynnapu@just.ee
alexander.seger@coe.int (T-CY Secretariat)

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Please quote: JC/AS/TCY

Mr. Jesper HJORTENBERG
Chair of CDPC

Strasbourg, 26 May 2014

Dear Mr. Hjortenbergs,

Thank you for your letter of 25 March 2014 concerning the implementation of the Committee of Ministers' decision of 10 April 2013 on the review of Council of Europe Conventions and the responsibilities of the CDPC and relevant convention-based bodies in this respect.

Membership in the Convention on Cybercrime ("Budapest Convention"), ETS 185, is increasing steadily and currently comprises 42 Parties, including non-member States of the Council of Europe, namely, Australia, the Dominican Republic, Japan, Mauritius, Panama and the USA. All Council of Europe member States have at least signed it with the exception of the Russian Federation and San Marino. An additional eleven non-member States have signed it (Canada and South Africa) or have been invited to accede. Further accession requests are in process. It is indeed advisable that all member States, which have not yet done so, sign and become Parties to this treaty.

The Protocol on Xenophobia and Racism Committed Through Computer Systems (ETS 189) has been ratified by 20 and signed by a further 18 States (including Canada and South Africa).

Since November 2011, the quality of implementation of the Convention on Cybercrime increased in particular through a more active role of the Cybercrime Convention Committee (T-CY). I wish to point out that the T-CY now holds two plenary sessions as well as several bureau and working group meetings per year. The T-CY currently comprises 42 Parties as members, 22 observers States and ten international organisations. It has become a highly relevant international body for cybercrime matters. The main impediment is that resources for the T-CY are not commensurate with the additional functions, meetings, members and observers.

In 2012, the T-CY, began to assess implementation of the Convention by the Parties. A first cycle, focusing on the expedited preservation provisions, was completed in December 2012. A second cycle, focusing on some of the international cooperation provisions, is to be completed in the course of 2014.

Moreover, the T-CY is preparing and adopting Guidance Notes. Such Guidance Notes represent the common view of the Parties and allow applying existing provisions of the Budapest Convention to new cybercrime phenomena without the need for constant amendments to the treaty.

The Budapest Convention and the T-CY are complemented by capacity building projects. These projects enable many Parties to implement the Budapest Convention in practice and States invited to accede to complete the accession process.

The triangle of common standards (Budapest Convention), follow up and assessments (T-CY) and capacity building projects represents a highly dynamic approach and make the Council of Europe unique in cybercrime matters. With the newly established Cybercrime Programme Office (C-PROC) in Bucharest (operational as of April 2014), the Council of Europe now disposes of the necessary infrastructure to provide further support to countries worldwide.

The T-CY does not see a need for amendments to the Budapest Convention. However, the Committee is giving consideration to a possible Additional Protocol on international cooperation, including transborder access to data. The current assessment of the international cooperation provisions is likely to result in proposals for inclusion in a possible Protocol. Already in 2011, the T-CY decided to establish a working group on transborder access. Research and dialogue with different stakeholders are underway. The further course of action regarding a possible Additional Protocol should become clearer by the end of 2014. The T-CY will certainly keep the CDPC informed of any developments in this respect.

Yours sincerely



Markko Künnapu
Chair of the Cybercrime Convention Committee (T-CY)



Mr Jesper Hjortenberg
Chair of the CDPC

Strasbourg, 3 June 2014

Dear Mr Hjortenberg,

I refer to your letter dated 25 March concerning the implementation of the Committee of Ministers decision of 10 April 2013 on the review of Council of Europe conventions in which you request the PC-OC to provide concise and written feedback to the CDPC on the implementation/assessment with regard to the conventions for which it is responsible.

It is my pleasure to inform you that the PC-OC discussed your letter during its last plenary meeting from 19 to 21 May 2014 and concluded that a reply on the substance should be prepared for approval during its next plenary meeting on 18-20 November 2014. You will find this conclusion reflected in the list of decisions of the 66th plenary meeting of the PC-OC (doc PC-OC (2014) 02, item 3).

I will be happy to answer any further related questions during the upcoming meeting of the CDPC.

Yours sincerely,

Joana Gomes Ferreira
Chair of the PC-OC

Mr Jesper Hjortenber
Chair of the CDPC
National Member of Denmark for EUROJUST
Email: jhjortenber@eurojust.europa.eu

Reykjavik, 2 June 2014

Dear Mr Hjortenber,

I refer to your letter addressed to my predecessor, Mr Ruelle, concerning the follow-up to the decision of the Committee of Ministers of the Council of Europe of 10 April 2013 on the "Review of Council of Europe Conventions – Report by the Secretary General".

I have the pleasure to inform you that the Lanzarote Committee will be ready to provide the CDPC with the requested concise and written feedback on its work in the Autumn 2014. At its meeting in September (9-11/9/14), the Lanzarote Committee should adopt its 1st activity report.

In September the Lanzarote Committee will also start its monitoring work. I take this opportunity to reiterate our invitation to the CDPC to appoint a representative to participate in the Lanzarote Committee's meetings. The assessment of the situation in States Parties with respect to the first monitoring theme - "The protection of children against sexual abuse in the circle of trust" – will start by focusing on the criminal law framework implemented by States Parties in this regard. The contribution of a representative of the CDPC would indeed be highly appreciated.

Looking forward to a fruitful cooperation between the CDPC and the Lanzarote Committee, I wish you a good meeting next week.

Best regards,

Bragi Gudbrandsson

Chair of the Lanzarote Committee



Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

THE PRESIDENT

Please quote: DGI/WR/Bj/er

Mr Jesper HJORTENBERG
Chair of the CDPC

Strasbourg, 7 May 2014

Dear Mr Hjortenberg,

Thank you for your letter of 25 March 2014 concerning the implementation of the Committee of Ministers' decision of 10 April 2013 on the review of Council of Europe Conventions and the responsibilities of the CDPC and relevant convention-based bodies in this respect. Your request for information - as far as GRECO is concerned - is limited to the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191).

As you are aware, the Council of Europe was a pioneering standard-setter in this area at the time of the adoption of these instruments. This was confirmed, not least, when the UN Convention against Corruption - to a large extent providing equivalent provisions - was adopted several years later.

The Criminal Law Convention on Corruption and its Additional Protocol have been ratified by a large majority of Council of Europe member States: ETS 173 by 44 member States (and Belarus) and ETS 191 by 35 member States. GRECO monitored, in detail, some of the provisions of ETS 173 in the Second Round Evaluations and the bulk of the provisions of ETS 173 and ETS 191 under its Third Evaluation Round. The evaluations and the following compliance procedures are still ongoing in respect of a number of States. It should be noted that all GRECO members have agreed to such monitoring, regardless of whether these instruments have been ratified or not. In this context, it is also worth mentioning that GRECO recommendations are not only limited to criminal law compliance with the provisions under scrutiny but, also, to the ratification of these instruments and/or withdrawal of reservations whenever appropriate. GRECO has been rather successful in this respect.

As you are aware, on 21 June 2013, GRECO discussed the feasibility of an additional protocol to the Criminal Law Convention on Corruption to cover the non-profit sector and agreed then that it was premature to take a firm decision as the question merited further consideration, notably, in the light of the outcome of the work underway within the enlarged Partial Agreement on Sport (EPAS) on a draft Convention against manipulation of sports competitions. As this work is still ongoing, GRECO's position in this respect remains the same to date. That said, your letter will be discussed in the next Bureau meeting of GRECO (23 May 2014) and in the following plenary meeting of GRECO on 16-20 June 2014. Only after these dates, will I be in a position to provide further information about these issues.

Yours sincerely,

Marin MRČELA

Strasbourg, 5 September 2014

Greco (2014) 11E revised

Review of Council of Europe Conventions

Response to the European Committee on Crime Problems (CDPC)
regarding the Criminal Law Convention on Corruption (ETS 173)
and its Additional Protocol (ETS 191)

Prepared by the Bureau of the Group of States against Corruption (GRECO)
(Berne, 5 September 2014)¹

¹ On behalf of GRECO, pursuant to decisions 34-36 adopted by GRECO 64 (Strasbourg, 16-20 June 2014).

The Group of States against Corruption (GRECO) and its Bureau have taken note of the letter from Mr Jesper HJORTENBERG, Chair of the CDPC, of 25 March 2014 concerning the implementation of the Committee of Ministers' decision of 10 April 2013 on the review of Council of Europe Conventions and the responsibilities of the CDPC and relevant convention-based bodies in this respect. The CDPC's request for information - as far as GRECO is concerned - was related to the Criminal Law Convention on Corruption (ETS 173) – hereafter “the Convention” – and its Additional Protocol (ETS 191).

Following discussions of these matters at both GRECO and Bureau level, the CDPC is invited to take note of the following observations:

1. The Council of Europe was a pioneering standard-setter in the area of international anti-corruption standards at the time of the adoption of the Convention and its Protocol. This has been confirmed on numerous occasions, not least when the UN Convention against Corruption - which to a large extent provides equivalent provisions - was adopted several years later.
2. The Convention and its Protocol have been ratified by a large majority of Council of Europe member States: the Convention by 44 member States (and Belarus) and the Protocol by 36 member States. The three Council of Europe member States which have not as yet ratified the Convention are Germany, Liechtenstein and San Marino.
3. GRECO monitored, in great detail, some of the provisions of the Convention in its Second Round Evaluations and the bulk of the provisions of the Convention and its Protocol under its Third Evaluation Round. It should be noted that all GRECO members have agreed to such monitoring, regardless of whether they have ratified the two instruments or not. In this context, it is also worth mentioning that GRECO recommendations are not only limited to criminal law compliance with the provisions under scrutiny but, also, to the ratification of the instruments and/or withdrawal of reservations whenever appropriate.
4. GRECO's monitoring experience shows that the ratification of the two instruments did not automatically, nor in all cases, lead to a satisfactory level of alignment of domestic legislation with their letter and spirit. This is evidenced by the fact that all States that have ratified these instruments have received recommendations to address certain shortcomings and lacuna in their domestic legislation, e.g. concerning the criminalisation of members of domestic public assemblies for acts of corruption and trading in influence, sanction levels in connection with private sector bribery or dual criminality requirements for corruption offences committed abroad by citizens or residents of a given State. On the positive side, GRECO's recommendations have clearly prompted a very large number of member States to address the problems identified in a constructive manner, as shown in GRECO's impact assessments (“compliance procedures”) which, for a few member States, are ongoing.
5. Although not designed for ascertaining a possible need to revise or amend the text of the Convention or its Protocol, GRECO's monitoring work has not revealed any particular shortcomings that might need to be addressed at present nor any need for “promotional” action concerning these instruments. A detailed exchange of views regarding these matters held at its 64th plenary meeting (Strasbourg, 16-20 June 2014) confirmed this view.

6. Nevertheless, it should be recalled in this connection that the Committee of Ministers had invited the CDPC, in co-operation with GRECO and the European Partial Agreement on Sport (EPAS) to consider the feasibility of an Additional Protocol to the Criminal Law Convention on Corruption (ETS 173) which could expand the scope of application of its provisions to the private non-profit sector, notably sport. It is noteworthy in this context that the Convention aims at protecting society against corruption in both the public and private sectors. However, it defines private corruption with reference to “business activity” thus deliberately excluding any non-profit oriented activities carried out by individuals or organisations. The drafters of the Convention made this choice in order to focus on the most vulnerable sector, i.e. business activities - fully aware that this choice might well leave certain legal gaps.

7. Following a special tour de table on this subject at GRECO’s 60th plenary meeting (Strasbourg, 17 - 21 June 2013) and in light of the recent exchange of views referred to above, it would be highly desirable from GRECO’s perspective if the CDPC would commission a feasibility study (or set up a working party) on the advisability of amending the Convention or complementing it with an Additional Protocol with a view to covering the non-profit sector which has up until now not received much attention in terms of corruption risks and the applicable legal framework (e.g. private associations - including those operating at international level, foundations, labour unions, charities, churches involved in service delivery to the community, etc.). Obviously, the recently adopted Council of Europe Convention on the Manipulation of Sports Competitions would need to be taken into account in this context.²

² The Convention was adopted by the Committee of Ministers at its 1205th meeting, on 9 July 2014, and will be open for signature on 18 September 2014, on the occasion of the 13th Council of Europe Conference of Ministers responsible for Sport which will take place in Magglingen (Switzerland).



Mr Jesper Hjortenberg
Chair of the CDPC
National Member of Denmark for EUROJUST
Maanweg 174
2516 AB The Hague
The Netherlands

E-mail: jhjortenberg@eurojust.europa.eu

Strasbourg, 21 November 2014

Dear Mr Hjortenberg,

Further to your request dated 25 March 2014 and my preliminary reply addressed to you on 3 June, it is my pleasure to contact you again to give you information on the assessment of the PC-OC concerning the implementation of the treaties for which it is responsible as regards extradition, mutual assistance in criminal matters, transfer of proceedings in criminal matters and the transfer of sentenced persons. Practical problems concerning the implementation of these treaties are discussed at each meeting of the PC-OC and solutions are proposed to address these problems in an adequate way.

The European Convention on Extradition (ETS No. 24, 1957) has been recently updated with a Third and a Fourth additional Protocol in order to adapt it to modern needs (CETS No. 209, 2010; CETS No. 212, 2012). Although the Convention is generally seen to function in a satisfactory way, a higher number of ratifications of the latest additional Protocols would facilitate significantly the implementation of extradition procedures among the 50 Parties to this Convention.

The implementation of the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30, 1959) and the additional Protocols thereto (ETS No. 99, 1978 and ETS No. 182, 2001) is the object of continuous assessment by the PC-OC and proposals to improve the functioning of these instruments are regularly discussed. In this regard, your attention is drawn to the decisions taken at the 67th meeting of the PC-OC. The PC-OC has agreed to facilitate their practical implementation by the development of model request forms and practical guidelines for practitioners. However, it can be noted that the implementation and reasons for non-ratification by some member states of the second additional Protocol (ETS No. 182) may merit further assessment.

In 2011, the PC-OC conducted an inquiry into the European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 073), noting that this instrument has only been ratified by 23 member states. It was found that the lack of ratifications was not linked to shortcomings in the convention itself but merely to the fact that some states found sufficient legal basis for co-operation in other existing instruments. In order to address the practical difficulties reported by the Parties as regards the implementation of this Convention, the PC-OC developed, in 2012, Practical measures to

improve co-operation in respect of transfer of proceedings, including a model request form (PC-OC INF 78).

Finally I should like to recall that in 2013 the PC-OC conducted a comprehensive inquiry as regards the implementation of the Convention on the Transfer of Sentenced persons (ETS No. 112) by its 64 Parties and of the Additional Protocol thereto (ETS No. 167, 36 ratifications). This inquiry revealed a number of obstacles to the speedy and successful implementation of this Convention and its Additional Protocol (see Doc PC-OC (2013)10 Rev and PC-OC (2013)10 ADD rev). The PC-OC formulated initial proposals on how to address these obstacles which I presented to the CDPC during its 66th meeting. Following the mandate given by the CDPC, the PC-OC decided to instruct the PC-OC Mod to start the work by preparing a draft protocol amending the Additional Protocol to the Convention for consideration by the PC-OC plenary at its next meeting. The PC-OC Mod has furthermore been instructed to consider non-binding solutions to problems identified, such as the possible development of an electronic tool to facilitate transfer procedures.

At its next meetings, the PC-OC will discuss the implementation of the Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS No. 051), the Convention on International Validity of Criminal Judgments (ETS No. 070) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141). The committee's assessment as regards these instruments will be sent to you in the near future.

Yours sincerely,



Joana Gomes Ferreira
Chair of the PC-OC